

A
REPORT
OF THE
TWO CASES OF CONTROVERTED ELECTIONS

22. 8. 1808.
OF THE
Borough of Southwark,
IN THE COUNTY OF SURREY;

Which were tried and determined by SELECT COMMITTEES
of the HOUSE OF COMMONS,

*During the First Session of the Eighteenth Parliament of Great
Britain, 37 GEORGE III.*

WITH NOTES AND ILLUSTRATIONS.

TO WHICH ARE ADDED,

An ACCOUNT of the Two subsequent Cases of the
City of CANTERBURY;

AND

An APPENDIX on the Right of the Returning Officer
to administer the Oath of Supremacy to Catholics.

By HENRY CLIFFORD,
OF LINCOLN'S INN, BARRISTER AT LAW;

Non modo casus eventusque rerum, sed ratio etiam causasque noscuntur.
TACIT. HIST. lib. i. c. 4.

LONDON:
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A
REPORT
OF THE
TWO CASES OF CONVERTED ELECTIONS

OF THE
Borough of Southwark,
IN THE COUNTY OF SURREY;

Which were tried and determined by Select Commissioners
of the House of Commons,
During the first Session of the Nineteenth Parliament of Great
Britain, 53 George III.

WITH NOTES AND ILLUSTRATIONS.

THE FOLLOWING ARE ADDED,
An Account of the Independent Cases of the
City of Southwark;

42.
AND

An APPENDIX on the Right of the Returning Officer
to administer the Oath of Allegiance to Catholics.



D. WEBSTER, BARRISTER AT LAW,
OF LINCOLN'S INN, BARRISTER AT LAW.

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TO
GEORGE TIERNEY,

THE WORTHY AND INDEPENDENT REPRESENTATIVE OF THE
BOROUGH OF SOUTHWARK, IN PARLIAMENT,

THE FOLLOWING

R E P O R T

IS INSCRIBED,

IN TESTIMONY OF THE REPORTER'S RESPECT FOR HIS PUBLIC,
AND ESTEEM FOR HIS PRIVATE AND HIS SOCIAL VIRTUES,

AND AS A MARK OF GRATITUDE FOR THE BENEFITS WHICH
THE REPORTER,

IN COMMON WITH THE REST OF HIS FELLOW CITIZENS,

IS LIKELY TO DERIVE

FROM HIS TRULY PATRIOTIC ENDEAVORS TO CHECK THE

SHAMEFUL PROBICALITY OF

CONTESTED ELECTIONS.

GEORGE TILNEY,

THE WOMEN AND INFANTS OF THE NORTH AND NORTHWEST
THROUGH THE SOUTH AND WEST

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CONFESTED ELECTION.

INTRODUCTION.

PERSONAL esteem and respect for Mr. TIERNEY, originally generated by a coincidence in political opinion, led me to *Southwark*, to assist him at the first election. A natural anxiety for the ultimate event, induced me to attend the trial of his petition; and an early conviction of what must inevitably be the result, and of the advantages which would be consequently derived to the cause of reform, determined me to take notes, in order to report the case.

THE task of a mere reporter must, from its nature, always be unpleasant; he has indeed, no great difficulties to encounter, but, tied down to record the ideas of others without being permitted to give scope to his own, he drudges under continual discouragement without one single gleam of fancy to enliven him in the way; nor are his labors

bors cheered by the pleasing expectation of celebrity. Like the Lexicographer, he may perhaps eventually obtain the negative recompence of escaping reproach; but like him, he is exposed to censure without hope of praise, liable to be disgraced by miscarriage, where success would have been without applause *. The utmost to which he can aspire, is to be allowed the merit of accuracy and diligence.

IN order to make this work the more acceptable and useful, I at one time intended to report the principal cases of Controverted Elections during the first session of the present parliament; but, finding that a similar design was entertained by another gentleman of considerable talents, I readily abandoned my intention, and confined myself to the report of the two *Southwark* Cases. This has enabled me to detail the speeches more at length, and to enter further into the history of these two elections, than I should otherwise have done.

* See Dr. Johnson's beautiful Preface to his Dictionary.

Of this Report, at least of the Notes, it would ill become me to speak; I have endeavored faithfully and impartially to transcribe the arguments on each side, and to illustrate the points which arose. Whether my endeavors have been crowned with success, it is not for me, it is the province of others to determine. Thus far, however, I may be allowed to say, that I have spared no pains, and that the reader may depend on the fidelity of every quotation. Such as it is, whatever may be its merits or defects, I now submit this work with all due humility and deference, but without fear, to the approbation or censure of a liberal profession and a discerning public. By their verdict it must stand or fall. May it be the means of checking the baneful prodigality of contested elections!

PERHAPS some apology may be expected for having so long delayed the publication. I was unwilling to publish in a hurry, or while similar cases were depending. By having deferred it for a few months, it has the additional weight of the decisions of the two *Canterbury* Committees, and of the

*

opinion

opinion of the Lord Chief Justice, KENYON, in the case of RIDLER *v.* MOORE. But I must admit, that the delay has not been owing solely to this cause: it has been owing partly to obedience to the calls of professional duty; partly to political avocations; partly, I hope not principally, to indulgence in pleasure and amusement.

Lincoln's-Inn,

Nov. 1st. 1797.

The Reader is desired to correct the following

ERRATA:

Page. Line.

- 103. 12. for "of common law," read "at common law."
- 122. - 1. for "confider," read "receive."
- 147. 12. for "in," read "into."
- 271. 22. dele, "the."
- 301. 20. for "scandle," read "scandal."
- 373. n. (c) after "ante," add "p. 188."
- 376. n. dele "(b)."
- ibid. n. after "3 Luders 123," insert "(b) chapter 2."
- 377. 2. for "changes," read "charges."
- 379. 21. for "what," read "that."
- 382. 17. for "maintenance," read "manurance."
- ibid. 19. before "benchers," insert "the."

The Petition was presented on Friday the 10th of
October 1796: it was ordered to be taken into
consideration on Tuesday the 15th of November
next. On that day the Committee was appointed
consisted of the following Gentlemen:

THE
FIRST CASE
OF
THE BOROUGH
OF
SOUTHWARK,

In the County of SURREY.

1796.

B

The PETITION was presented on Friday the 7th day of October 1796: It was ordered to be taken into consideration upon Tuesday the 1st day of November then next. On that day the Committee was appointed, and consisted of the following Gentlemen:

The Hon ^{ble} Tho ^s Grenville,	} Members for	
Chairman - - -		Buckingham.
George Pocock, Esq. - -		Bridgewater.
Christopher Atkinson, Esq. -		Heydon.
The Earl Gower Sutherland -		Staffordshire.
Edward Wilbraham Bootle, Esq.		Newcastle under Line.
The Hon ^{ble} Orlando Bridgeman		Wigan.
Thomas Drake Tyrwhitt, Esq.		Agmondesham.
Matthew Gregory Lewis, Esq.		Hindon.
The Lord Viscount Belgrave		Chester.
Sir John Frederick, Bart. -		Surrey.
Sir Edward Knatchbull, Bart.		Kent.
James Wildman, Esq. - -		Hindon.
John Cresset Pelham, Esq. -		Lewes.
<i>Nominee of the Petitioner.</i>		
Samuel Whitbread, Esq. - -		Bedford.
<i>Nominee of the Sitting Member.</i>		
William Dundas, Esq. - -		Tain, Dingwall, Dornoch, and Kirkwall.

PETITIONER,
George Tierney.

Sitting Member,
George Woodford Thellusson, Esq.

The Petitioner had no Counsel.

Agents for the Petitioner,
Messrs. Wallis and Troward, Norfolk-street; and
Mr. Alcock, Southwark.

Counsel for the Sitting Member,
Mr. Dallas, Mr. Serjeant Heywood.

Agent,
Mr. Henry Speck, Southwark.

THE
FIRST CASE
OF
THE BOROUGH OF SOUTHWARK.

THE Committee being met on Wednesday the 2d day of November 1796, the petition of *George Tierney* was read, setting forth, That by a standing order of the House, it is resolved as follows; that is to say, "That if any person hereafter to
" be elected into a place for to sit and
" serve in the House of Commons for any
" county, city, town, port, or borough,
" after the *teste* or the issuing out of the
" writ of election upon the calling or sum-
" moning any parliament hereafter, or after
" any such place becomes vacant hereafter
" in the time of parliament, shall, by him-
" self or by any other on his behalf, or at
" his charge, at any time before the day of
" his election, give any person having voice

“ in any such elections, any meat or drink
“ exceeding in the true value ten pounds
“ in the whole, in any place or places but
“ in his own dwelling house or habitation,
“ being the usual place of his abode for
“ six months last past; or shall, before such
“ election be made and declared, make any
“ other present, gift, or reward, or any
“ promise, obligation, or engagement to do
“ the same, either to any such person or
“ persons in particular, or to any such
“ county, city, town, port, or borough in
“ general, or to or for the use or benefit of
“ them, or any of them; every such enter-
“ tainment, present, gift, reward, promise,
“ obligation, or engagement, is, by this
“ House, declared to be bribery; and such
“ entertainment, present, gift, reward, pro-
“ mise, obligation, or engagement, being
“ duly proved, is and shall be sufficient
“ ground, cause, and matter to make every
“ such election void as to the person so offend-
“ ing, and to render the person so elected
“ incapable to sit in parliament by such
“ election.”—And, that by an act passed in
the 7th year of the reign of king *William*
the Third, intituled, “ An Act for pre-
“ venting

" venting charge and expence in Elec-
 " tions of Members to serve in Parliament,"
 reciting that, "Whereas grievous complaints
 " are made, and manifestly appear to be true
 " in the kingdom of undue elections of
 " members to parliament, by excessive and
 " exorbitant expences, contrary to the laws
 " and in violation of the freedom due to
 " the election of representatives for the
 " Commons of *England* in parliament, to
 " the great scandal of the kingdom, dis-
 " honourable, and may be destructive to
 " the constitution of parliaments; where-
 " fore for remedy therein, and that all elec-
 " tions of members to parliament may be
 " hereafter freely and indifferently made
 " without charge or expence," it was
 enacted and declared, that no person or
 persons thereafter to be elected to serve in
 parliament for any county, city, town,
 borough, port, or place, within the king-
 dom of *England*, after the *teste* of the writ
 of summons to parliament, or after the
teste or the issuing out or ordering of the
writ or writs of election upon the calling
or summoning of any parliament thereafter,

or after any such place should become vacant thereafter in the time of the then present or of any other parliament, should thereafter, by himself or themselves, or by any other ways or means on his or their behalf, or at his or their charge before his or their election to serve in parliament for any county, city, town, borough, port, or place, directly or indirectly, give, present, or allow to any person or persons having voice or vote in such election, any money, meat, drink, entertainment, or provision, or make any present, gift, reward, or entertainment, or should at any time thereafter make any promise, agreement, obligation, or engagement, to give or allow any money, meat, drink, provision, present, reward, or entertainment to or for any such person or persons in particular, or to any such county, city, town, borough, port, or place in general, or to or for the use, advantage, benefit, employment, profit, or preferment of any such person or persons, place or places, in order to be elected or for being elected to serve in parliament for such county, city, borough, town, port, or place;

And

OF SOUTHWARK. 7

And it was thereby further enacted and declared, that every person and persons so giving, presenting or allowing, making, promising or engaging, doing, acting or proceeding, should be and were thereby declared and enacted disabled and incapacitated upon such election to serve in parliament for such county, city, town, borough, port, or place, and that such person or persons should be deemed and taken, and were thereby declared and enacted to be deemed and taken no members in parliament, and should not act, sit, or have any vote or place in parliament, but should be, and were thereby declared and enacted to be, to all intents, constructions, and purposes, as if they had been never returned or elected members for the parliament. And that at the last election for the borough of *Southwark*, *George Woodford Thellusson*, esquire, *Henry Thornton*, esquire, and the Petitioner, were candidates to represent the said borough in parliament; and that the said *George Woodford Thellusson*, by himself, his agents, friends, and managers, did, after the *teste* and the issuing out of the

*See Curia
B. H. which
passed in 18
49. G. 3. c. 110*

8 FIRST CASE

writ of election, give to persons having vote in such election, meat and drink, and also make other presents, gifts, and rewards to such persons, contrary to and in defiance of the standing order of the House hereinbefore recited; and the Petitioner prays that he may be allowed, without loss of time, duly to prove the same, as a sufficient ground, cause, and matter, to make the said election void, and to render the said *George Woodford Thellusson* incapable to sit in parliament by such election: And that the said *George Woodford Thellusson*, by himself, his agents, friends, and managers, and by other ways and means on the behalf or at the charge of him the said *George Woodford Thellusson*, did, after the vacancy happened for the said borough of *Southwark*, and after the *teste* of the writ, give, present, and allow to persons having voice or vote in the said election, money, meat, drink, entertainment, and provision; and did make presents, gifts, rewards and entertainments, and promises, agreements, obligations, and engagements, to give or allow money, meat, drink, provision, presents,

OF SOUTHWARK. 9

sents, rewards, advantages, and entertainments, to and for several persons so having or claiming right to vote in the said election; and to or for the use, advantage, benefit, and profit of such persons so having or claiming right to vote in the said election, in order to procure him the said *George Woodford Thelluffon* to be elected to serve in parliament for the said borough of *Southwark*, contrary to and in contempt of the provisions of the act, passed in the 7th year of the reign of king *William* the Third, hereinbefore recited; whereby the said *George Woodford Thelluffon* is disabled and incapacitated upon such election to serve in parliament for the said borough of *Southwark*, and is to be deemed and taken no member in parliament, and ought not to act, sit, or have any vote or place in parliament, but is to all intents, constructions, and purposes, as if he had never been returned or elected member for the parliament; and therefore praying that an early day may be appointed to take the premises into consideration *.

* Votes, 21.

The

10 FIRST CASE

The last determination as to the right of election was then read.

“ 10th November 1702, Resolved, That
“ the right of electing burgesſes to ſerve
“ in parliament for the borough of *South-*
“ *wark*, in the county of *Surrey*, is only in
“ the Inhabitants thereof paying ſcot and
“ lot *.”

Then the ſtanding order of the Houſe for reſtraining counſel was read.

16th day of January 1735, Ordered,
That the counſel at the bar of this Houſe,
or before the Committee of Privileges and
Elections, be reſtrained from offering evi-
dence touching the legality of votes for
members to ſerve in parliament for any
county, ſhire, city, borough, cinque port
or place, contrary to the laſt determination
in the Houſe of Commons; which deter-
mination, by an act paſſed in the 2d year
of His preſent Maſteſty's reign, intituled,
“ An Act for the more effectual prevent-
“ ing Bribery and Corruption in the Elec-
“ tion of Members to ſerve in Parliament,”
is made final to all intents and purpoſes

* xiv Journals, 25.

what-

OF SOUTHWARK. 11

whatsoever, any usage to the contrary notwithstanding *.

There was no question upon the right of election.

The Petitioner opened his case.—He began by stating, that, the unusual appearance he then made, proceeded from no disrespect to the profession of the law, but from his having before had the misfortune to be involved in the trial of election petitions, and to have smarted severely under the expence necessarily attending them. From dear-bought experience he knew, that however advantageous the assistance of counsel might be to him, his means were too limited to enable him to afford it. He might be asked, Then why had he embarked in an expensive contest?—from a sense of duty. Had he spent but a few hundred pounds, the whole face of the election would have been altered; but, a mere seat in parliament was not his object. His object was to support the independence of the inhabitants of *Southwark*, and through them to vindicate the

* xxii Journals, 498.

privileges,

privileges and assert the rights of all the electors of Great Britain. With this object in view, he was determined to obtain a decision on a grand constitutional point.

There was however, an opinion gone abroad, that his petition was to no purpose, and that the time employed in hearing it would be lost; that no Committee would avoid an election on the ground of treating only, as such a decision would shake the seats of above half the members of the house. Language thus general and indiscriminate, would have been a foul calumny on the House of Commons, even before the passing of Mr. Grenville's act *. Now it was a libel of the grossest nature; he therefore intirely discarded from his mind all such considerations. Since the passing of Mr. Grenville's admirable act, no case had ever come before a Committee so pregnant with consequences to the constitution. The question was neither more nor less than, "whether persons of moderate though " independent fortunes, should in future be " allowed to become candidates at a popu-

* 10 Geo. III. c. 16.

" lar

"lar election." Unless the election of Mr. Thelluffon were declared void, all popular places would be shut against those who have not at least £. 10,000 to throw away. He therefore pressed for a decision on this point. In order to obtain it, he had narrowed the allegations of his petition, and confined them to the single article, "expence." He purposely waved all advantages which he might have derived from obstructions to the poll, from bribery, and from every other species of corruption. He charged no corrupt motive whatever, but confined his petition to the mere fact of treating; resolved, that in whatever way the Committee should determine, their decision should be clear and unequivocal, and the country should not mistake the grounds on which they decided.

He was aware what a load of formidable enmity he provoked by this line of conduct. All those, indeed, who trusted to their integrity alone for adherents; whose public and private virtues had gained them a circle of admirers. Those who looked on real merit as the only legitimate title to the support

support and gratitude of their fellow citizens; those who considered principle, not wealth, economy, not prodigality, to be the best earnest of public virtue, and of ability and inclination to support the interests of the country: all these would make a common cause with him. But on the other hand, all those, who, following the domineering passion of the day, thought wealth was every thing, and made light of principle; those who viewed an election as a mere mercantile speculation, and looked upon the House of Commons as a market, in which they were to realize their golden projects, and enrich themselves by selling the interests of their constituents, whom they previously had bought: all these were deeply involved in the decision of this important question, and made a common cause against him. He professed a high respect for the monied and commercial interest: no men were more respectable in their proper walk; but none more dangerous when they ventured to step out of it.

The history of this business was short. Previously to the dissolution of the last parliament,

liament, a considerable body of the electors of *Southwark* were dissatisfied with the principles and parliamentary conduct of their representatives. They believed themselves to be the most numerous and the strongest party; having tried their strength, and succeeded in various parochial contests. They therefore wished to start two candidates at the general election; but finding the opposite party equally confident of success, and unwilling to yield without a struggle, they paused (as well-meaning men will always do) anxious to preserve the peace of the borough, and unwilling to involve their neighbours in the riot and debauchery of a contested election. On this account, and with this view only, in the vain hope that their antagonists would be actuated by the same spirit of forbearance and moderation, they abandoned their first intention of supporting two candidates, and determined to content themselves with one. They then turned their eyes towards the Petitioner, a perfect stranger and totally unknown to them all, except through the medium of his political principles. At the first interview

view he informed them, that however anxious he formerly had been to get returned to parliament, circumstances had compleatly weaned him; he no longer looked to a seat in the House of Commons as an object of ambition; and having no selfish purpose to gratify, he would be at no expence in procuring it. He had formerly, when much younger, embarked deeply in elections; but since that time he had become the father of a family, for whom it was his first duty to provide; he must therefore decline the honor they intended him, if it was in any shape to be a matter of expence. They answered, that they not only professed principles, but wished to set the country an example of reducing them to practice. They boasted independence, and their candidate must be supported independently, and free of every expence to himself. On these terms the invitation was made and accepted. Belonging to no profession, having no immediate avocations, and being only required to become the instrument, by which they might assert their independence, and give effect to their principles; when

OF SOUTHWARK. 19

when no more was necessary, than that he should undergo the drudgery and fatigue of a personal canvass, he did not think himself at liberty to reject their offer; he accordingly consented to become their candidate. This was immediately proclaimed to the electors in a string of resolutions, which stated, that they had invited him to become a candidate, viewing him as a person zealously attached to a parliamentary reform; and that, as bribery and corruption were indications of certain destruction to a kingdom, it was determined to support him on true patriotic principles, by independent suffrage, and without expence. Such was his introduction; such his first acquaintance with the Borough.

On the first notification of these resolutions, Mr. *Le Mesurier*, their former representative, prudently withdrew, and immediately resigned his pretensions. Thus, the peace and quiet of the Borough seemed to be secured. Why had he stated all this?—To take from Mr. *Tbelluffon* the common and usual defence on such occasions: “I acted

“on the defensive; I was forced to it by

C

“the

So did Mr. Furlon in 1811 on hearing that Friends of Mr. Burdett were resolved.

"the conduct of my antagonists; I did no more than they did." Mr. *Tbelluffon* could plead no such plea. When first he came to the Borough, he was made acquainted with these resolutions; he knew from the first, that no expence was intended to be incurred by his opponents; his supporters knew it long before; yet so careless were they of the public peace and morals, that upon these resolutions being notified to them, they immediately set to work, and canvassed the city to find a candidate willing to embark in a contest, and to risk £. 10,000 on the event. Mr. *Tbelluffon* suited them exactly, and by the power of his purse, they procured him to be elected. Were men of moderate fortune, but independent principle, to be borne down by such unexampled prodigality? would the Committee suffer an encouragement to be held forth to such men as Mr. *Tbelluffon*, by wealth to overbear all principle?

He had not petitioned against Mr. *Thornton*, though his treating was a matter of equal notoriety, and perhaps of easier proof. Mr. *Thornton* stood in a very different situation:

situation: the extreme prodigality of Mr. *Tbelluffon* had compelled him to open houses in his own defence; and therefore he (the Petitioner) should have been little better than a common informer, if he had petitioned against Mr. *Thornton*, and had thereby placed the Committee in the disagreeable situation of being forced to decide against a man, who, not intending to transgress the spirit, had been compelled to violate the letter of the law, through fear of the consequences which might eventually arise to him from the flagrant misconduct of another.

All the constitutional writers lay it down as the most sacred principle, "that elections ought to be free." On this freedom of election depends the balance of the constitution. Various remedies had from time to time been applied for its preservation; whatever seemed to have a tendency to disturb this equipoise, had been carefully removed. Partiality in returning officers; corruption and bribery, whether in candidate or in elector; influence in peers and in the crown, had been guarded against

by various acts of parliament and resolutions of the House. But none of these mischiefs were to be compared to the evil he complained of; it aimed a blow at the very vitals of the constitution. This system of prodigal expence, rendered all competition vain; it tore up every principle root and branch; it made the writ of summons a cruel mockery, in commanding the return of "the most fit and discreet." While this prodigality was suffered to prevail, "the fit and discreet" were the very last who would embark in an election. Unless this profusion and debauchery were checked, populous cities would in future be represented by only two descriptions of men; the immensely rich, whom no expence could terrify, and the needy adventurer, who already ruined, had become desperate, and was therefore ready to stake every thing on any chance. From these two ranks alone (both equally in the extreme) a candidate must in future be selected, unless this growing evil were removed by the timely application of some effectual remedy. If these corrupt practices
were

were allowed to be committed with impunity, the best qualifications for a seat in the legislature, would soon operate as disqualifications. Age, which naturally commands respect, as being attended with more knowledge and experience, would be a disqualification of itself: What aged man would be equal, or (if equal) would choose, to undergo the fatigue of such a contest? Who more proper for a legislator than the man of deep reading and sober reflection; or who, by his own domestic good management and economy, had already given an earnest, that he was fit to be intrusted with the public concerns, and that the purse of the nation might safely be confided to his hands? Who more fit than the prudent father of a family, who had given domestic pledges of fidelity to the state? But such men, yea, all good men, would shrink from the guilt of such extravagant profusion; and retiring from these scenes of riot, would make way for the gay, the spend-thrift, and the prodigal.

It was for the Committee to weigh this well; it particularly behoved the country

gentlemen to look to its consequences. If they did not check this growing enormity, it would in all probability be eventually their ruin. Whenever any rich interloper should choose to molest them, they would be forced into the dismal alternative of surrendering, to him, their old family interests, formed by the virtues of their ancestors, and strengthened by their own, or else of racking their tenants, and mortgaging their estates. If the morals of the people were worth preserving ; if, in populous places, elections ought to depend on the free and unbiassed voice of the people, and not on the drunken clamor of the mob ; if family connections and local interests ought to be maintained, the Committee would hesitate before they confirmed the election of Mr. *Tbelluffon*, and thereby sanctioned charge and expence at all future elections, together with the whole train of fatal consequences which he had enumerated. Much depended upon their decision. To stop this mischief, alike destructive to candidate and elector, it luckily was not requisite to reform or innovate. The law did not connive

at

at it ; it was express upon that head ; nothing was wanting but spirit to carry the law into effect.

Towards the close of the reign of Charles the second, the House of Commons became sensible of the mischief of this practice, and of the necessity of an immediate remedy. Corruption had at that time risen to such a height, that many old family estates were ruined. The House therefore passed the resolution of the 2d April, 1677 ; generally known by the name of "the treating resolution *."

But this resolution failed in producing the desired effect. It was soon discovered, that there was a loop-hole to creep out at ; and it was so frequently evaded, that soon after the revolution, it was found necessary to strengthen it by an act of parliament. This act, however, was little understood, and had been rarely carried into effect ; indeed it was thought in vain to attempt it, before the passing of Mr. Grenville's act. As by the bill of rights, so by the act of the 7th of king *William*, the freedom of elec-

* ix Journ. 411.

tion was not given to us as a boon, but asserted as a right, and recognized as a principle of the constitution. It was not passed to prevent the giving corruptly; that was already an offence at common law; it was passed to prevent all charge and expence whatever at elections. This appeared from the title of the act: "An act for preventing charge and expence in elections of members to serve in parliament." To bring the offence within this act, no corrupt motive need be proved; every thing which rendered an election expensive, was contrary to the act of parliament, as well as to the spirit of the constitution. It was for the Committee to give effect to this wholesome statute. There was no question of law to perplex them. Every body who could read must understand the act; every body who could hear must comprehend his case. The Committee were to give their judgment upon oath; and by that oath they were bound to determine, according to the act of parliament.

During the reigns of Queen *Anne* and of *George* the first, owing to the negligence of the

the House of Commons in carrying this act into execution, this practice grew still more grievous, and increased to a most alarming height. It was an argument in favour of the septennial act, that elections were become so expensive, that few could afford to be elected more than once in seven years. This argument was answered by a sensible observation of Sir *Robert Raymond*, "that
 "the expence of elections was become
 "scandalous indeed; but there was no
 "need of a new law. The fault lay not
 "with the electors, but with the House of
 "Commons, who obstinately shut their
 "ears against every complaint *."

Since that time, Mr. *Grenville's* act had passed into a law. Before the passing of that act, however strong one's case, it was dangerous to petition the House of Commons for redress. Till then, the conduct of the House, in cases of election, had, with a very few exceptions, been so grossly offensive, and their decisions so indecent, as to bring them within the description of an

* See note (A) at the end of the volume. 365
 elegant

elegant anonymous writer; "that they were
 "men of a middle compound character,
 "who, without firmness enough to avoid
 "a dishonourable action, had feeling enough
 "to be ashamed of it *." The ancestor of
 the honorable Chairman caught the tran-
 sient gleam of shame, and by its means car-
 ried into effect his act, which is at once the
 best security for the freedom of election,
 and the firmest bulwark of defence to our
 constitution and our liberties †.

In this case there was no party question.
 The Committee had to determine upon a
 breach of a positive act of parliament; the
 eyes of the country were fixed anxiously
 upon them; and if they could bring them-
 selves to decide in opposition to the act,
 the shame and the disgrace would be ex-
 clusively their own; there was no majority

* Junius, letter 7.

† De Lolme in speaking of the *Grenville* act, (p. 99)
 says, "it is one of those victories which the parliament
 "from time to time gains over itself; in which the
 "members, forgetting all views of private ambition,
 "only think of their interests as subjects."

with

with whom they could divide it. But he would not imagine for a moment that the Committee would not do justice. If fifteen gentlemen, chosen indifferently by ballot, and sworn to decide according to the evidence and the law, could be induced to act contrary to their oaths, the trial by jury was of little value, and it would be better and more safe to live in any other country.

As to the evidence he had to offer to the Committee, he could lay down no certain rule. From the nature of his case, he had to contend with many difficulties. His proofs must come from the friends of Mr. *Thellusson*. They were parties to his infringement of the law, and he must call them to prove its infringement. They could not be expected to be very willing witnesses. He should however proceed to the merits as quickly as he could, and support his allegations by every means in his power.

The Petitioner concluded by giving notice, that if he should succeed in his petition, he should apply to the Committee
to

to vote frivolous and vexatious the defence of Mr. *Tbelluffon*.

The Committee were employed seven days in hearing evidence. Most of the publicans in *Southwark* were examined. But as the detail of the evidence, however necessary to be gone into before the Committee, would only serve to incumber the page without throwing any additional light upon the subject, or even amusing the reader, I have thought it advisable to omit the greater part of it, and to content myself with giving the general result, coupled with such parts of the evidence as were the most material ; and I am the more induced to adopt this mode, as it will avoid repetition, all the principal points of the evidence being adverted to in the speeches.

It was proved, that a number of public houses were opened by order of Mr. *Tbelluffon's* committee, expressly for the purpose of treating the electors in his interest.

Printed

Printed cards were distributed each morning, containing a list of the houses open for the day. By their direction, the bills were made out, "To Mr. *Tbelluffon's* committee," and were paid by drafts upon the *Southwark* Bank. Money had been previously lodged there by a Mr. *John Cossart*, on account of *Scrivener*, one of the members of the committee. The money lodged by him completely covered all the payments of the committee. There was no subscription to support Mr. *Tbelluffon's* election. This *Cossart* was a stranger to the Borough; he had never been seen there before the election; he had no connections there. His father had been a partner with old Mr. *Tbelluffon*: he himself had formerly been his confidential clerk; and at the time of the election was, and had been for years, the wine merchant of the family. It was admitted, that he was not indebted to any of the committee, nor were they to him. That, the sums, which he had lodged, discharged no debt, and created no obligation. It was proved, that

that due diligence had been used to serve him with the Speaker's summons, but that he could not be found, and there was every reason to suppose that he purposely kept out of the way for fear of being served with it. It was also proved, that at some of these public houses the distribution of wine was checked and superintended by the butler, and at others, by one *Waterhouse*, a clerk of the sitting member. Mr. *Thellusson* himself was present at several of these houses (even at those so superintended) at times during the election.

Henry Wilkes, a notary public, said, That *Langbelt's* house, the sign of the *Bull* in *Tooley-street*, had been opened in the interest of Mr. *Thellusson*. He availed himself of its being so opened. On the Saturday evening preceding the election, he went there a little after ten o'clock, and found a considerable number of persons assembled. Mr. *Atkinson* and Mr. *Clowder*, both members of Mr. *Thellusson's* committee, were there. *Atkinson* accosted the witness, and asked him, If he had not been canvassing

canvassing in the interest of Mr. TIERNEY? the witness answered, That he had. *Atkinson* then, in rather a disrespectful manner, charged the witness with inconsistency in canvassing for Mr. *Tierney*, and coming to eat Mr. *Tbellusson's* victuals and drink; to which the witness replied, that he considered himself as much entitled to partake of Mr. *Tbellusson's* victuals and drink, if they were his, as either he (*Atkinson*) or any other of Mr. *Tbellusson's* friends, as he had promised Mr. *Tbellusson* a vote as well as Mr. *Tierney*. *Atkinson* was afterwards publicly justifying Mr. *Tbellusson* for opening houses, and rather degrading Mr. *Tierney* for not doing so too. He as much as said, that he had neither spirit nor property to accomplish what he was about. A good deal more was said in commendation of Mr. *Tbellusson's* liberality, opposed to the shabbiness of Mr. *Tierney*. Mr. *Tbellusson* came there in the course of that evening: his conduct was very polite; he staid about half an hour, during which time he joined in the festivity of the night.

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The witness believed that Mr. *Thellusson* was to pay for the wine drank by the company, both because he was informed by Mr. *Atkinson* that he was eating and drinking at Mr. *Thellusson's* expence, and because when Mr. *Thellusson* quitted the room he wished all present a good night, and said, 'that he hoped they would make free, and want for no refreshment.' The whole of Mr. *Thellusson's* conduct during his stay there was such as to make the witness believe he was the master of the feast. The witness voted for *Thellusson* and *Tierney*.

On his cross examination he admitted, that some public houses also had been opened for the voters of Mr. *Tierney*: he confessed, that besides being a notary public, he was an agent to captains of ships coming coastwise with corn; that within the last half year he had been committed to the *Poultry Compter* by the Lord Mayor, upon three several charges of having, in that capacity, committed frauds on the Custom-house; that he had since been indicted for them, and that the city of *London* were the prosecutors,

prosecutors, and he was then under bail to answer these indictments*. He also allowed that he was employed by Mr. Tierney's agent, Mr. *Alcock*, to collect evidence in support of the petition. He had not agreed with him for any particular sum, but expected to be paid handsomely. He was employed by Mr. *Alcock*, for the particular purpose of discovering what houses had been opened for Mr. *Thellusson*, and did not expect to be paid for any thing else than for his trouble and time in collecting that particular information.

Edmund Marsden, a hop-merchant, recollected Mr. *Thellusson* being first proposed as a candidate for the Borough. There was a meeting at the Three Tuns Tavern, in order to introduce him. The witness was at the meeting. Mr. *Richard Carpenter Smith*, a hosier, and justice of the peace, made a speech: he spoke very much in favour of Mr. *Thellusson* as a commercial man, and worthy the attention of

* The city of London have discontinued these prosecutions.

the Boronians * as their member of parliament. He said also, that with respect to opening public-houses, Mr. *Tbelluffon* would leave it to his committee to open such as they pleased; and though it was to be understood that he did not come into the Borough to squander his money, yet he would answer for it Mr. *Tbelluffon* would not mind a few hundreds. This was the tenor of his whole speech. The witness took no notes of it; he spoke only from recollection, but it struck him so forcibly at the time that expence would not be spared, that he never forgot it since. He voted for *Tierney* only. He attended this meeting at the Three Tuns, not knowing but Mr. *Tbelluffon* might be a man whom he should like to vote for; but he changed his mind, owing in a great measure to what he heard at that meeting, as he considered it very improper to put any gentleman to any expence who is to be returned a member of parliament.

* Southwark being the first Borough in the kingdom, its inhabitants by way of distinction call themselves *Boronians* or *Boroughonians*, instead of *Burgesses*.

Thomas Andrews, a hop-factor, was also at the meeting at the Three Tuns. Seeing a gentleman's coach at the door, he inquired what was going on at the Tuns, and was informed there was a gentleman from the city come to offer himself as a candidate. He went up stairs into the room. He found about 60 people there. *Mr. Richard Carpenter Smith* was in the chair. He made a speech, in which he recommended *Mr. Thellusson* as a gentleman of independent fortune, and a fit person to represent the Borough. Other speeches were made to the same effect. Some people were named that night as the committee for managing *Mr. Thellusson's* election. The purposes for which the committee was appointed were also mentioned. *Mr. Carpenter Smith* proposed, as the best way of conducting the election, to form committees in the different parishes. *Mr. Thomas Ellis* said, That *Mr. Thellusson* had come over as a candidate to the Borough, but they did not wish to put him to any great expence. *Mr. Carpenter Smith* replied, That there must be some money spent,

but he thought it most advisable for Mr. *Tbelluffon* to leave it in the breast of his committees, in case they saw it necessary at any time to open houses to treat the electors. He said Mr. *Tbelluffon* would not object to spend a few hundreds on the election, as it could not be done without it. Upon this Mr. *Tbelluffon* got up and told them, he would leave his election wholly to his committees; and, that a few hundreds were no object to him. When the witness went to the meeting he knew nothing of Mr. *Tierney*, he had never seen him. He voted for *Tierney* and *Thornton*.

The Petitioner then closed the evidence by calling Mr. *Alcock*, who had been throughout his confidential agent. The first question which he put to him related to the expences of the election. This question was objected to by the Counsel for the Sitting Member, and immediately waved by the Petitioner, who declined asking him any further questions. He said, that Mr. *Alcock* knew every thing relating to the election, and had managed all the money concerns: he tendered him to cross examination,

mination, and he would answer any question they should put to him, without sheltering himself under the circumstance of having been professionally employed by him in a confidential situation. The Counsel for the Sitting Member not chusing to cross examine Mr. *Alcock*, the Petitioner desired that this objection to his question, and their refusal to cross examine his agent, might be inserted in the minutes; which was done accordingly.

Mr. *Tierney* then summed up the evidence.

He said that he insisted on his question to Mr. *Alcock*, and the objection to it, being inserted in the minutes, because no person who had attended the trial of his petition could have failed observing a constant threat held out by his opponents of what would soon appear against him. Though the success of his petition did not depend on the purity of his own character, yet, situated as he was, he felt it to be his duty to preserve it spotless, to shew to the Committee that he came before them with clean hands; that he was actuated by no

party malice, nor wished, by any subterfuge, to convict Mr. *Tbelluffon* of a crime, of which he himself was guilty. Consistently with the allegations of his petition, and according to the forms of the House, he could not enter upon a vindication of his own conduct, but he was determined to shew it wanted no vindication. He had nothing to keep back: he had therefore placed his only manager in the box, and tendered him to the examination of Mr. *Tbelluffon's* Counsel. Having put it in their power to examine him as to every particular relating to the election, and they having declined it, nothing could be insinuated against him as to any transaction upon which light could have been thrown by the evidence of Mr. *Alcock*.

Unexperienced in the management of a cause, he felt his situation to be painful, and the task he had to perform difficult in the extreme; but when he considered the nature of the case, and looked back to the honorable manner in which the Committee had conducted themselves, he felt much relieved. Had the calumnies spread abroad
against

against them proved true; had the Committee, as was falsely insinuated, attempted to screen Mr. *Tbelluffon*, he would, in his own justification, have ransacked to the dregs every porter-house in *Southwark*, in order that, if they determined contrary to evidence, the Country might see that there was no excuse for their conduct. But they had risen superior to calumny, and had set censure at defiance; he honored them for every thing they had done, for every syllable they had uttered: It was his inclination therefore as well as his duty, to consult their convenience. The case he had opened was, that Mr. *Tbelluffon* had obtained his seat by the most extravagant expence. This he had sufficiently established; yet he closed it, having thirty-five publicans more to call. It appeared in evidence that in one single parish upwards of £.2,500 had been spent in mere eating and drinking, and that considerable sums had also been expended in the other parishes, no part of which had been applied to defraying the expence of erecting the Hustings, or of taking the Poll, the only

expences which could have been legally incurred.

Thus stood his case. Much remained behind; but he did not choose to go further into it, or prove more than was absolutely necessary. He was endeavouring to obtain a decision on a grand constitutional question, which should be not only advantageous to himself, but, through him, beneficial to the Country. He feared making out too strong a case, lest he might frustrate this great object. If he proved his case too strongly, it might be said, that had he proved less, the Committee would not have decided against Mr. *Tbellusson*: that he had made a case so strong as to leave them no alternative, and that they could not help determining in his favor. Had he proved his whole case, others might again be tempted to tread in the same steps; they might think it safe to go a little way, confident of impunity, if they fell short of the shameless prodigality brought home to Mr. *Tbellusson*.

The petition alledged, that in order and with a view to his election, Mr. *Tbellusson*,
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in violation of the statute of the 7 *W. III.* c. 4. and of the resolution of the House of Commons of the 2d April 1677, had, by himself or his agents, given meat, drink, entertainment, and provision, to persons having votes in the election. In order to succeed, he was bound to establish this; but, he denied that it was necessary for him to trace the orders for payment, or the payment itself, directly home to Mr. *Tbelluffon*. If he had laid before the Committee a strong body of presumptive evidence, he had done much. But if that evidence admitted of contradiction, he had done all that could be required of him. It was for Mr. *Tbelluffon* to do the rest, and call witnesses to contradict it *.

It was his duty to satisfy the Committee, that, subsequently to the issuing of the writ, Mr. *Tbelluffon* had, directly or indirectly, given or allowed meat, drink, entertainment, or provision; that he had given or allowed it, in order to be elected, and to persons having votes in the election. That,

* See note (B) at the end of the volume. 370

if not given directly by himself, it had been given or allowed by some other ways or means on his behalf, or at his charge, or that he had made a promise or engagement to give meat, drink, or entertainment, to the Borough in general.

The Committee were sworn well and truly to try the matter of the petition referred to them, and to give a true judgment according to the evidence *. It was not for them to consider the consequences, or how it would affect the parties. They were not called upon to punish. If the evidence adduced substantiated the allegations of the petition, they were bound to declare that the return was void, and that Mr. *Tbelluffon* should be deemed and taken no member in parliament.

On the first point, viz. That the treating was subsequent to the issuing of the writ, there could be no doubt. All the witnesses agreed that it was during the election, and some had proved that it ceased immediately when the poll was closed ;

* xxxiii Journals, 59.

and, in point of fact, it could not be otherwise, as Mr. *Tbelluffon* did not declare himself a candidate till within a few days of the election; and here he begged the Committee to recollect, that Mr. *Tbelluffon* came to oppose him, he did not go to *Southwark* to oppose Mr. *Tbelluffon*.

On the second head also, the evidence was decisive. Several publicans had proved that their houses were opened to all comers; and as the right of voting was in the inhabitants generally, paying scot and lot, they must have been considerably crouded by electors. Some of the publicans when their houses were opened, were ordered to provide entertainment for the electors going up to poll for Mr. *Tbelluffon*; and one of them proved, that within five minutes after the close of the poll, he received orders from the committee not to keep open house any longer. No doubt therefore could be entertained as to the view with which the entertainments had been given. Mr. *Tbelluffon*'s committee seemed to have acted on a regular system: they carefully arranged in order, each day, the houses
which

which were open, and opened fresh ones from time to time, as occasion required. But, if notwithstanding this evidence, any doubt remained of the view with which they had been opened, the evidence of *Wilks* completely dispelled it. When he went to *Langbelt's*, he found there Mr. *Atkinson* and Mr. *Clowder*, both members of Mr. *Tbelluffon's* committee. Their conversation with *Wilks* was remarkable; from their language it was evident that the object of the committee was to extol the profusion of their favorite candidate, to hold him forth to the electors, as a person not only willing, but able to spend any sum of money amongst them, in order to secure his election, and to depreciate the Petitioner as a person of a mean and shabby disposition, unworthy their support. Thus the two first branches of the statute were proved.

The third branch still remained. It was by far the most important, and the most difficult to prove. It was necessary to shew that the acts of the committee were in fact the acts of Mr. *Tbelluffon*. Here prob-

bably the counsel of Mr. *Tbelluffon* would make their stand; and on his deficiency in this respect, would principally rest their argument. The facts to which he referred on this head, went however this length; they proved that every thing done by the committee was done with the knowledge and privity of Mr. *Tbelluffon*. They afforded a reasonable presumption, that he not only approved their conduct, but also lent them his assistance.—First. Mr. *Tbelluffon* was traced to *Smith's* in *Horseley-down*. The house was open to all comers. A flag was hung over the door, with an inscription, "*Tbelluffon* for ever." It was impossible but he must have known this house was opened in his interest. He was proved also to have been at one of the houses, superintended by his butler; and also at *Langbelt's*, where he joined in the festivity of the night. Three instances on such a point were as strong as 300. They sufficiently established the fact of the treating having taken place with his privity and knowledge. But it was also proved to have taken place with his approbation,

probation, and that he even lent his assistance, by the means of his servants. In two public houses, a gentleman superintended the distribution of wine, and took an account of the provisions delivered out. This gentleman turned out to be the butler of Mr. *Tbelluffon*. Mr. *Tbelluffon* was proved to have been at these houses during the election, and must have seen his own butler in the act of doing the honours of the table to the electors. It might indeed be contended, that the butler acted in this manner from pure zeal for the interest of his master, and without his knowledge or consent. But it would not easily be believed, that he could have been absent during the whole of the election, without the knowledge of his master, and without even being missed at home. The fact, however, might be easily ascertained. He had raised the presumption of Mr. *Tbelluffon*'s concurrence. His counsel had but to call the butler and rebut it.

But this was not the only assistance which he lent. *Waterhouse*, one of his clerks, attended for three days at another public

public house, and superintended the distribution of provisions there. In such an extensive concern as Mr. *Tbelluffon's*, could a clerk be so easily spared from the counting house, and be absent three days, without the knowledge or permission of his employer. If *Waterhouse* superintended in this house without the orders of Mr. *Tbelluffon*, they had but to call him, and he would prove it. Thus he had succeeded in raising a violent presumption (if not in establishing) that every thing was done with the privity, knowledge, and approbation of Mr. *Tbelluffon*; and that he had even lent his assistance, through the medium of his servants and clerks. It was proved to have been a matter of notoriety in the Borough, that the gentlemen at the *George Inn*, were Mr. *Tbelluffon's* committee, and that they managed his money concerns; one of them altered the title of a publican's bill, and ordered him to make it out "to Mr. *Tbelluffon's* committee." He did so, and the committee paid it. It was needless to go further into particular instances. Those who were most active among the publicans were

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all members of Mr. *Tbelluffon's* committee. One of them allowed that the committee was appointed to manage the election interests of Mr. *Tbelluffon*, and had a general authority to act, without receiving express instructions on each particular occasion.

Here then he might close his case. Unless it were contradicted, he had proved enough to avoid the election. If what he had proved were false, there was an easy method of contradicting it: Mr. *Tbelluffon* had but to follow his example; he had but to call into the box, the principal manager of his election. If Mr. *Tbelluffon* was innocent, the evidence of this gentleman would establish it. A few questions to him would be sufficient either for convicting or acquitting Mr. *Tbelluffon*.

But it was proved that Mr. *Tbelluffon's* committee not only treated on his behalf, but that he was a party to the treating. The committee were appointed at the Three Tuns tavern, under his very eye. He afterwards attended their meetings. The Ball in Tooley-street, was opened by
their

their orders. Mr. *TheHuffon* attended there, and what were his manner and conversation? He not only partook of the festivity, but when he left the room, desired the company to make free and want for no refreshment; and his conduct throughout his stay there was such, as to induce the persons present to believe that he was the master of the feast. From this it was clear, that Mr. *Tbelluffon* was to carry into effect what his committee organised. They were to open houses in their name, and he was to go round to them, in order to convince the electors that it was his meat and drink they were consuming; unless he impressed them with this idea, the treating would have been to no purpose. The Counsel for Mr. *Tbelluffon* felt the importance of this evidence. They therefore endeavored to invalidate the testimony of *Wilkes*; they examined him as to his having been arrested and committed to the Poultry Compter, and afterwards indicted for frauds upon the Custom House, in importing corn. But in no instance had they impeached his credit, or shewn him unworthy of belief; nor

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could they shew the slightest contradiction in his evidence.

Thus he had proved that Mr. *Tbellusson* was a party to the formation of the committee ; that he personally gave effect to their contrivances ; that the treating was after the *teste* of the writ ; that it was given with a view to be elected ; and that it was on the behalf of Mr. *Tbellusson*. But the evidence went further ; it proved, in the words of the act, that it was " at his charge." He had raised a strong presumption, that the bills were discharged with the money of Mr. *Tbellusson* ; from the nature of the case he could do no more ; it could not be supposed that Mr. *Tbellusson* paid the money with his own hand. He must have been the most unguarded man alive, and have been most incautiously counselled, if he had no secret agent to transact the pecuniary part. But never was more caution used ; never was an election better managed ; never was machinery more completely put together. It was in evidence, that the money with which the committee paid the bills, was not the money

ney of the committee; and that it was not raised by subscription. This was decisive, when coupled with the speeches of *Richard Carpenter Smith* and *Mr. Thellusson*, at the Three Tuns tavern. If it was not the money of *Mr. Thellusson*, any one of the committee, *Mr. Smith* himself, their chairman, might be called to prove to whom it belonged. *Coffart* was the secret agent employed for this purpose, and there could not have been a person better fitted for the employment. His father had been partner with old *Mr. Thellusson*; he himself had been his clerk, and was still the wine-merchant of the family. He was a person on whom they could rely with the most implicit confidence. Added to this, he was totally unconnected with the Borough, a circumstance which rendered detection the more difficult. And here the evidence became very material. All the publicans were paid by the committee. Whence came the money? *Scrivener*, one of the committee was paymaster for the parish of *St. George*. On the 31st of May, the balance in his banker's books was £. 200 in his fa-

vor. On the 30th of June it was £. 120. So that he appeared to have spent £. 80 only during that time. But within the period of striking these two balances, the sum of £. 2,400 was paid in to his account; of this, £. 2,227. 7s. were paid in by *Cossart* himself. By referring to the different checks given by *Scrivener* to the publicans, it appeared that their bills were all discharged from this fund furnished by *Cossart*. *Cossart* also paid £. 500 to the account of *Clowder*. *Clowder* was the paymaster in the parish of *St. John*. This covered all his payments in that parish, on account of the election. In fine, the whole of the expence incurred by the committee was defrayed out of the money furnished by *Cossart*. But, besides these payments to the committee, *Cossart* made several others for the purpose of the election. Several persons applied to him, and he paid them their demands. Why did they apply to *Cossart*? Because, as they had been told, it was a matter of public notoriety and general conversation in the Borough, that *Cossart* discharged all claims upon Mr. *Tbelluffon's* committee. Then who was this Mr. *Cossart*,

sart, so totally unconnected with the Borough, and unknown to all its inhabitants? How came he to take so active a part in the election? What could induce this generous stranger to bear so much of the expence, and to pay to these new acquaintance such large sums, which (they all admitted) discharged no debt, and conferred no obligation? Was it possible to raise a stronger presumption, that this was the money of Mr. *Thellusson*. He had done every thing in his power to find *Coffart*; he had endeavored to serve him with a Speaker's summons; he had searched for him in town; he had sent an express after him in the country; he had called his brother as a witness, in hopes of discovering where he was concealed; but all in vain, he was not to be found *. Mr. *Thellusson* might be more successful. He might call upon him by every tie of gratitude; and surely, as the confidential friend of his father, and the creature of the house, he would be glad to step forward to save the

* See post.

credit of the son, and clear him of the charge which was brought against him.

It was remarkable, also, in what light the expence of the election was considered by the friends of Mr. *Tbelluffon* in *Southwark*. *Clowder* said, that he always looked to a man and his principles before he made himself liable to expence. Though paid by *Coffart*, he rather considered Mr. *Tbelluffon* his debtor. He expected to be repaid by Mr. *Tbelluffon* for what he laid out; and his reason was not a bad one, *viz.* that he had incurred these expences as a member of his committee. This presumption was so strong, that it was of itself sufficient to establish his case; unless the Counsel for Mr. *Tbelluffon* were ready to contend, that he was not answerable for any payments which were not actually made with his own finger.

Here the case ended as far as it depended on presumptive evidence; but the strongest part still remained behind. It was brought directly home to Mr. *Tbelluffon* himself. He attended the meeting at the *Three Tuns* tavern; he adopted the speech
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of *Richard Carpenter Smith*, and thereby sanctioned all future proceedings of the committee, and empowered them, at their own discretion, to open houses at his charge. This was decisive of the case, if the evidence of *Andrews* were believed: if it were not true, it might be easily contradicted. They might call *Mr. Smith* himself, or any of the sixty persons who were present at that meeting.

Thus the evidence operated two ways. If the chain of presumptive evidence was not sufficient, he had carried it up link by link to *Mr. Thellusson* himself. This speech of *Mr. Thellusson*, was alone sufficient to vacate the election. It was an undertaking on his part to treat the Borough in general. Would the learned Counsel argue that the speech of *Mr. Smith*, thus adopted and espoused by *Mr. Thellusson*, did not bring him within both the spirit and the letter of the act of parliament?

Such was the case on which he called for the decision of the Committee. He could not pretend to guess the nature of the defence, still less could he imagine

that the Counsel for Mr. *Thebussan* would have dragged him down merely to take the chance of the Petitioner's not being able to substantiate the allegations of his petition. He therefore supposed that they must have some kind of defence in view; but, unless the whole of the evidence were disbelieved, it was impossible for them to succeed. If the evidence were false, it would be easy for them to contradict it. The *Butler* might be called to prove, that he superintended without the knowledge of his master. *Waterhouse* could prove, that though a clerk of Mr. *Thebussan*, he was not his emissary on this occasion. *Coffart* could prove, that he acted entirely from motives of disinterested generosity. But even this would not be sufficient. Unless they also discredited the evidence of *Wilkes*, *Clowder*, *Marsden*, and *Andrews*, his case was fully established. This they never would attempt. He therefore supposed that there would be no defence upon the merits: they probably would make their stand upon some point of law.

The Petitioner then concluded nearly in
these

these words :—I have at length discharged the most important duty of my life. Had I foreseen the difficulties which I have encountered, I should not have had the courage to undertake it. I return you my thanks, sincerely, for your kind indulgence and attention throughout the trial of my petition. In return, I have conferred a signal service upon you. I have placed you in a situation in which you may do more essential good to your country, more towards preserving the morals of the people, than has fallen to the lot of any fifteen gentlemen since the Revolution. This case is of great magnitude. It involves, in a great measure, the security of the landed interest; but it is peculiarly important, when considered with relation to the great question of Parliamentary Reform; a question immediately connected with your decision. Much as it is my interest to conciliate your favor, I disdain to play the hypocrite. I shall not conceal from you my real sentiments. I am, and shall continue as I always have been, a sincere, zealous, and firm friend to a Reform in Parliament. I think

it a measure absolutely necessary for the safety of the country, and the preservation of the constitution, which I love and admire. But declare the election of Mr. *Tibelluffon* to be void, and you will do more towards quieting popular discontent, than all the penal statutes which the legislature can enact, than all the prosecutions which the Attorney General can commence, or the severest punishments which our courts of law can inflict. You will prove, that the evils complained of by reformers, compose no part of the British constitution; but exist only in its abuse. That what is demanded as an innovation, already forms a part of the constitution. That if in the closer boroughs the choice of the people is of no avail, yet there are others through which the popular voice may penetrate to the House of Commons, even as at present constituted. In fine, you will shew that the constitution is in principle, and, when well executed, as perfect as any reasonable man can wish. Thus you will forestal the desires of the moderate reformers, you will destroy all rage for innovation, and reduce them

them to the wish, that the remaining part of the constitution may be reformed, and likened to the other. Reform never can be dangerous but when it comes with violence, and is forced upon the legislature. The day of reform must come. When that day arrives, and I hope to God it will be soon, the benefit of your decision will be felt: you will have smoothed the way, and have broken the impetuosity of the torrent; and, by softening down the irritations and asperities of the reformers, you will have endeared and conciliated them to their country and the constitution. But you will not only prevent all danger which might arise from reform; your decision will also offer a grand and enviable spectacle to Europe. We have often heard of late that the law is equal to the rich and to the poor. This will be an instance of it. You will shew that I, without connections, riches, or power, being aggrieved by the rich, the powerful, the strongly-connected Mr. *Thellusson*, appealed to the law, and that I obtained redress.

DEFENCE.

Mr. *Dallas*.—Whatever sentiments the Petitioner might entertain of the House of Commons, to Mr. *Tbelluffon*, at least, a seat in parliament was of importance, and by him considered as an object of fair and honorable ambition. The Petitioner had truly stated, that the Committee were sworn to administer the law according to the evidence, and to decide according to the proofs adduced in support of the allegations contained in his petition. Mr. *Tbelluffon* joined in this prayer with the Petitioner; he prayed them to determine according to the evidence, and avoid his election if the charges against him were made out according to the sound principles of law and justice. But he also prayed them to take for their guide the wise system of English jurisprudence, and the known and established rules of evidence, and that they would not decide according to the wild new-fangled doctrines, now for the first time broached by the Petitioner,

and

and which once adopted, farewell the whole system of the English law, and the accumulated wisdom of ages.

There were three points to which the Committee should direct their attention; 1st. The letter of the law. 2d. The facts in evidence. 3d. An application of that evidence to the law. This was the path in which they had to tread.

First. The letter of the law.—The petition imputes to Mr. *Tbelluffon* a breach of the statute of the 7th of King *William* the Third, commonly called the Treating Act. If the Petitioner had convinced the Committee that Mr. *Tbelluffon*, either by himself, or by persons authorized by him on his behalf, or at his charge, had, with a view to his election, given meat, drink, entertainment, or provision, to persons having votes in the election; or that he had made any engagement to treat the Borough in general, he had made out his case, and was entitled to their judgment. There was no dispute between them on the construction of the act of parliament.

Secondly, The facts in evidence.—And this led to a consideration of the whole case.

case. The Petitioner having preferred a positive charge, was in the situation of every other plaintiff; he was bound to make out his charge. He must succeed by the strength of his own case, not by the weakness of that of his opponent. What then were the facts of this case? At the last election for *Southwark* there were three candidates. Mr. *Tbelluffon* became one but a few days previous to the election. There were five populous and extensive parishes, and it was found necessary to appoint committees in each to canvass and perform what was not in the power of the candidate. This conduct was not confined to Mr. *Tbelluffon*. Mr. *Tierney* had his committees also. What then was the nature of their appointment? How far was Mr. *Tbelluffon* responsible for their aggregate or individual acts? These were important questions. He did not deny their having been appointed under the immediate eye, and with the knowledge and approbation of Mr. *Tbelluffon*. He had never shrunk from the avowal. Mr. *Tierney's* committees were appointed in the same manner. He
admitted

admitted it was proved, that, during the election, many houses were opened on the behalf of Mr. *Tbelluffon*; that expences were incurred; that the bills were honorably paid, and that persons of all descriptions, voters as well as others, had been entertained. But, the question was not whether there was treating; but by whom? Apply the evidence to the law. Mr. *Tbelluffon*, it was true, was present at the formation of the committee, and attended some of their meetings during the election; but it was also true, that, though the committee was formed with his approbation, the persons who composed it were previously unknown to him. They were not named by Mr. *Tbelluffon*. On the contrary, they nominated themselves, at a meeting called for the general purpose of supporting any candidate whom they should find worthy of their choice.

But it was contended, that this acquiescence of Mr. *Tbelluffon*, in the formation of a committee thus nominated, rendered him responsible for all the acts of each member of that committee. If that

were law, Mr. *Tbelluffon* most certainly had lost his seat. But could it gravely be maintained as law, that the acquiescence of a candidate in the formation of a committee, for legal purposes, rendered him responsible for their illegal acts? Where agents are appointed for a lawful purpose, the principal is not affected by any illegal act without the scope of their appointment, unless he authorises or consents to that individual act. The appointment of a committee for election purposes is legal. Whether Mr. *Tbelluffon*, therefore, is responsible for the acts of his committee, depends not on his having been present at its formation, but on the question, If these acts were done by them as a committee, whether they acted within the scope of their appointment; or, if they were the acts of particular members in their individual capacities, whether they had authority from him for each particular act? The question in the *Cricklade* case was exactly the same. An action for bribery had been brought against Lord *Porchester* by Mr. *Petrie*, the disappointed candidate. The question was, Whether

Whether Mr. *Bristow* was an agent of Lord *Porchester*, for the purpose of bribing the electors? In summing up to the Jury, Mr. Justice *Buller*, after stating the act of parliament, laid down the law. He said, "There are a number of circumstances that you are to take into your consideration before you decide finally upon this business. On the part of the plaintiff, there are two questions that arise for you to determine. The first is, Whether the defendant, Lord *Porchester*, did employ *Bristow* to bribe the voters at the last election for the borough of *Cricklade*? If he did not employ him, nothing that *Bristow* said or did can affect the defendant; but, if he did employ him, it is to be considered as the act and deed of my Lord *Porchester*, and he is answerable for it*." The learned Judge did not tell the Jury, that if they found *Bristow* was the general agent of Lord *Porchester* for the purposes of the election (for that was admitted) they must find a

* *Petrie's Cricklade case*, 135.

verdict for the plaintiff; but, narrowing the ground to the proper point, if they thought he was employed by him for the purpose of bribing the voters, then they must give a verdict against his lordship. So here; it is not sufficient that the committee were the general agents of Mr. *Thellusson* for the purposes of the election. To make him liable, they must have had express authority from him to open the different houses, and treat the electors. This distinction must be attended to. It is not indeed requisite to prove a direct order in each particular case; but, it must be shewn, that there was something more than mere approbation of their appointment. That there was an authority to do the act, otherwise the consequences would be too dangerous. No man, who appointed a committee, could be safe unless he were to be constantly present to overlook their conduct. Under a general appointment for the most legal purposes, he might be made answerable for the most illegal acts. A proposition too monstrous to be assented to. The whole case, therefore, resolved itself

self into this question: Was the treating brought home to Mr. *Tbelluffon*, or only to persons for whose acts he was not liable, at least to that extent? This was the real question. He had never thought of denying that houses were opened, and that the publicans were paid.

The Committee had heard much of Mr. *Tbelluffon*'s butler, of *Waterhouse* his clerk, and of *Coffart*, of what had passed at the *Bull* in *Tooley Street*, and at the *Three Tuns* tavern. Before he commented on these points, he should lay down two or three acknowledged principles of law, and then apply the evidence to them. First, *Hearsay* is no evidence. The language of Mr. Justice *Buller* is decisive on that head: "Hearsay is no evidence: for no evidence is to be admitted but what is upon oath; and, if the first speech were without oath, another oath that there was such speech, makes it no more than a bare speaking, and so of no value in a court of justice." In examining the

See note (B) at the end of the volume.

Law of Nisi Prius, 294.

related

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evidence,

evidence; therefore, they must distinguish what was upon oath from what was mere hearsay. Matter of opinion, belief, conjecture, must also be rejected. They amounted to no more than hearsay, and so were of no value in a court of justice. Examine then the evidence according to this rule.

First as to the Butler:—Was any thing relating to him sufficiently established in evidence, to call upon Mr. Tbelluffon to answer it? If it were even true, that he had been seen at a public-house superintending the distribution of provision, what then? The question still remained, by whom was he desired to superintend? It did not even appear that the appointment came from the committee; and, if it had, Mr. Tbelluffon not being responsible for their illegal acts, must be still less so for those of their agents. But how was it proved that this person was the butler of Mr. Tbelluffon? One publican swore, that at his house a person superintended the distribution of wine. This person was a total stranger to him. He did not know him to be the
butler

butler of Mr. *Thellusson*, but only supposed him to be so from what he had heard from others, who also were unknown to him. This was no more than hearsay. The other witnesses spoke from belief; but their belief rested on no better foundation, for none of them had ever seen the man before or since. The fact, therefore, of the person superintending being the butler of Mr. *Thellusson*, was not proved. The evidence relating to it was mere hearsay, opinion, belief, and conjecture, and so of no value in a court of justice. It could not be endured, that a gentleman should lose his seat, because strangers in his absence opened houses in his behalf, and asserted that one of their number was his confidential servant. The committee would pause before they went that length. Such a decision would affect them all; it would overturn every fundamental principle of law and justice.

Next as to *Waterhouse*.—He doubtless was clerk to Mr. *Thellusson*: he did not dispute but that it was with the knowledge and approbation of his master, that he

absented himself from the counting-house. No doubt he rendered his master every assistance he was able during the election; but was any thing more proved? Had he done any thing for which Mr. *Tbelluffon* was answerable? If it had been proved, that bills had been brought to him at the counting-house, and paid by him in his capacity of clerk, or in the presence, or by the order of Mr. *Tbelluffon*; or that when brought they had been paid by Mr. *Tbelluffon* himself, or that drafts for the amount had been signed by him, then, indeed, he would be affected by it. But the case was exactly the reverse. So far from this, it was in evidence, that *Waterhouse* actually refused to pay a bill when brought to him, and referred the bearer for payment to the committee at the *George*, by whom it was afterwards discharged. The whole therefore of the evidence, as far as it related to *Waterhouse*, left the case exactly where it was before.

Then as to *Coffart*. Because he made several payments, it had been contended that they must have been for treating the electors.

electors. Supposing this had been proved, some connection must be shewn between him and Mr. *Tbelluffon* as to these individual payments, or he could not be affected by them. Whatever might have been the object of these payments, he did not deny that they had been made; but there was no proof whatever, that they were authorised by Mr. *Tbelluffon*, or that he was privy to them. Privy in such a case was not to be implied, it must be directly proved. But it seemed *Cassart* was not forthcoming, and this circumstance was to supply the want of legal evidence, and to be conclusive against Mr. *Tbelluffon*, unless he produced him. A strong suspicion had been raised, which the sitting member was bound to do away. Such doctrines really shocked. What! Sufficient for the petitioner to raise suspicions, in order to put the sitting member on his defence? Suspicion never could be the ground of a judicial determination. That a fact was proved, because a suspicion was raised of its existence, and not removed by the other party, was a doctrine abhorrent both from the

spirit and the practice of the law of England.

The case therefore stood thus. The committee was formed with the knowledge and consent of Mr. *Tbelluffon*, for the general purposes of the election, and public-houses were opened by them; but there was not a tittle of evidence to shew, that Mr. *Tbelluffon* was privy to their opening them. All the orders which the committee gave, were given in his absence; he was not present at the opening of a single house, or at the delivery of any bill. He was never made debtor by the publicans. He knew nothing of the payments, nor were they made out of any fund which he had furnished. If it had been shewn, that Mr. *Tbelluffon* had paid any money into the *Southwark* bank, then it would in some measure have been brought home to him; but the payments into that bank were all made by *Coffart*, over whom Mr. *Tbelluffon* had no control.

In all former cases, every thing had been made out in evidence, nothing left to be supplied by inference. In the *Ipswich* case,

case *, Mr. *Cator's* election was declared void upon clear and distinct proof. All the bills were made out in his name, delivered to, and paid by him. So also in the *Norwich* case †, the ground of which was treating, it was not only proved that committees were appointed for the general purposes of the election, but that Mr. *Hobart* had actually paid into his banker's hands large sums of money, on an election account; that all the drafts with which the bills were paid, were drawn by him, and in his name; that he settled the account himself, and gave express authority to his agents to open houses. In these cases the proof was direct. Here the privity of Mr. *Tbelluffon* was not attempted to be made out, otherwise than by circumstantial evidence; but circumstantial evidence had no weight, unless the circumstances on which it rested were proved as facts. On this point three witnesses had been called. *Wilkes*, *Marsden*, and *Andrews*. In examining evidence three points were to be con-

* 1. *Luders*, 21. † 3. *Luders*, 441.

sidered;

sidered; first, the indifference of the witness as to the parties concerned; secondly, his impartiality in the cause; and, thirdly, his character as a witness, and the consistency of his account. Then who were these witnesses? At what time, and under what circumstances, were they produced? What was their evidence? Four days had elapsed in tedious examination, without one single glance at Mr. *Tbellusson*. Then *Wilkes* presented himself. He was more than a willing witness; he came for no other purpose than to betray the man whom he had pretended to support. His dispute with *Atkinson* was immaterial, whatever he might have learnt from him was in the absence of Mr. *Tbellusson*; and being only hearsay, was of no value in a court of justice. The expression of Mr. *Tbellusson*, which he swore to, was however material, if *Wilkes* were a man to be believed; but his evidence was full of contradictions. He swore expressly to this one expression of Mr. *Tbellusson*; but though he heard the whole of his conversation at the *Bull*, he could not recollect any thing else that he had
said.

said. Being asked what reason he had to believe that the treating was at Mr. *Tbellusson's* expence, he answered, because *Atkinson* had told him so, and had upbraided him for eating the victuals of Mr. *Tbellusson* after he had been canvassing for Mr. *Tierney*. This he stated to be the only ground of his belief. But having been sent out of court while a point of evidence was arguing, which afforded him an opportunity of conversing with his friends without ; upon his return, he for the first time recollected this speech of Mr. *Tbellusson*. This was a circumstance of strong suspicion. But he had been committed to the Poultry Compter, and prosecuted for three different crimes, and although it was not three months since he had been committed, he pretended not to recollect how long it was since he was last in confinement. He was then, upon his own shewing, a man of blasted character. Besides, he was a common agent employed to collect evidence for Mr. *Tierney*. When asked if he had been paid?—No. If he was to be paid any specific sum?—No. He would be rewarded, no doubt, according to

to the materiality of the evidence he collected. Such was the man whom Mr. *Tierney* had brought, with three indictments on his back, to support his case. He complained of the production of such a witness.

Marsden's evidence was next.—Contrast his evidence with that of *Andrews*. If the evidence of *Marsden* were true, that of *Andrews* must be false. Compare their accounts of the meeting at the *Three Tuns* tavern. *Marsden* stated the speech of Mr. *Smith*; he said it was the tenor of his whole speech. Not a word about a speech from Mr. *Tbellusson*. He said that he was present at the meeting, and that he was till then a total stranger to the person of Mr. *Tbellusson*. Is it possible if Mr. *Tbellusson* had made this speech, it could have escaped the attention of *Marsden*, a man so feelingly alive upon the subject of expence; that although he had intended to vote for Mr. *Tbellusson*, yet as soon as he heard that expence was to be incurred, he changed his mind, and gave his interest to Mr. *Tierney*. Still however, the case was defective;
nothing

nothing had been brought home to Mr. *Tbelluffon*. Then, upon the last day, as a forlorn hope, *Andrews* was produced, and, to enable him to give his testimony, the most salutary rule of evidence was infringed *. But though he had been admitted as a witness, his evidence was not entitled to any credit. He had attended in the committee-room the four first days; he had heard the evidence of *Marsden*; and, though strenuous in the service of Mr. *Tierney*, he never till then mentioned what he knew, either to him or to any of his agents, although his evidence was so essential to the success of the petition. The evidence of *Andrews*, therefore, was entitled to no credit. It was suspicious from the time when it was produced, and the circumstances under which it was brought forward. But as to the speech of Mr. *Tbelluffon*, which he stated, it could not be true. This appeared from the evidence of *Marsden* and *Scrivener*, both of whom were present at the meeting, and did not recol-

* See post.

left any thing of the kind having taken place.

To conclude. It was proved, that public-houses had been opened, and that meat and drink had been distributed on the behalf of Mr. *Tbelluffon*; but there was no proof that he was privy to the opening a single house, to the giving one single order, or to the payment of a single bill. He was not responsible for the acts of others. The case at best rested on suspicion. Nothing positive was brought home to Mr. *Tbelluffon*. That part of the evidence, which could in anywise materially affect him, resolved itself into hearsay, belief, and conjecture, and so was of no value in a court of justice. He therefore concluded, by again joining in the prayer of the petitioner, that the Committee would maturely weigh this case, and decide according to the evidence and the law.

The determinations of the Committee, as reported to the House next day, appear in the votes in the following words :

“ Sabbati, 12^o Die Novembris, 1796.

“ Sir *Edward Knatchbull*, from the Select
“ Committee,

“ Committee, who were appointed to try
 “ and determine the merits of the petition
 “ of *George Tierney*, complaining of an un-
 “ due election and return for the Borough
 “ of *Southwark*, informed the House, that
 “ the said Select Committee have deter-
 “ mined,

“ That *George Woodford Thelluffon*, esquire,
 “ is not duly elected a burghess to serve in
 “ this present parliament, for the said Bo-
 “ rough of *Southwark*.

“ And also, that the said Select Com-
 “ mittee have determined, that the last
 “ election for the said Borough of *South-*
 “ *wark*, so far as relates to the said *George*
 “ *Woodford Thelluffon*, esquire, is void.

“ And also, that the said Select Com-
 “ mittee have determined,

“ That the petition of the said *George*
 “ *Tierney*, did not appear to the said Select
 “ Committee to be frivolous or vexatious.

“ And also, that the said Select Com-
 “ mittee have determined,

“ That the opposition of the said *George*
 “ *Woodford Thelluffon*, esquire, to the said
 “ petition,

“ petition, did not appear to the said Select
 “ Committee to be frivolous or vexatious.

“ And the said determinations were or-
 “ dered to be entered in the Journals of this
 “ House,

“ *Ordered*, That Mr. *Speaker* do issue his
 “ warrant to the clerk of the crown, to make
 “ out a new writ for the electing of a burges
 “ to serve in this present parliament for the
 “ Borough of *Southwark*, in the county of
 “ *Surrey*, in the room of *George Woodford*
 “ *Tbellusson*, esquire, whose election for the
 “ said borough has been determined to be
 “ void.

“ Sir *Edward Knatchbull*, also reported
 “ from the said Select Committee, that they
 “ had come to a resolution, which they had
 “ directed him to report to the House;
 “ and he read the report in his place, and
 “ afterwards delivered it in at the table,
 “ where the same was read, and the reso-
 “ lution of the Committee is as followeth,
 “ viz.

“ *Resolved*, That it appears to this Commit-
 “ tee, that at the last election for the Borough
 “ of

" of *Southwark*, *George Woodford Tbelluffon*,
 " esquire, did act in violation of the statute
 " of the 7th of *William* iii. cap. iv. where-
 " by he is incapacitated to serve in parlia-
 " ment upon such election.

" *Ordered*, That the said report do lie upon
 " the table *."

Immediately upon the determination of the Committee declaring the election void, and the special resolution of incapacitation being made known to the parties, the Petitioner insisted that the opposition to his petition ought to be reported frivolous and vexatious. He knew that it was a generally received opinion, that no committee would vote a defence frivolous and vexatious. But he flattered himself, that opinion was ill founded. Nothing could be more unjust than to saddle with costs, a person who without just grounds presents a petition, and at the same time, to allow a seat procured by corruption, and a breach of the law, to be maintained with impunity, to the

* Votes, 204.

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vexation

vexation of the Petitioner. If ever a defence could be deemed frivolous or vexatious, it must be in such a case as this. Mr. *Thellusson* could not have been ignorant of that prodigality and expence, by mere dint of which he had obtained his seat; and would the Committee suffer the Petitioner to be burthened with costs, in a case where Mr. *Thellusson*, knowing he had no merits, depended on the chance of the Petitioner's not being able to substantiate by legal evidence, the charge which he had preferred against him. By avoiding the election, the Committee had done much for the constitution; it remained for them to complete their work. Unless they voted this defence frivolous and vexatious, their other decision would be of little value, nay, it would be holding out a premium to corruption. A monied person had but to add to his other prodigality, the price of the returning officer, and he secured the return; if opposed by an independent man of moderate fortune, he was sure of retaining his seat; for, what man, who would give nothing to purchase a seat in parliament,

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would

would petition, even with a certainty of success, if the consequence of that petition was to be, that he must pay costs to the amount of several hundred pounds. The substantial ends of justice required, that his expences should be repaid. It was in vain to say that elections should not be expensive, if the setting aside those procured by prodigality and corruption, was to be attended with an expence, which a man of moderate fortune was unable to support. The money of Mr. *Tbellusson* was not his object; he stood on public ground and wished for a decision beneficial to the public. He was willing to wave his claim to the money, provided he could obtain this decision.

Mr. *Dallas*.—The Petitioner might have enjoyed his triumph with moderation. The compromise which he concluded by offering, was an insult to Mr. *Tbellusson*. The Committee would consider, whether they would for the first time report a defence to be frivolous and vexatious, when the application was avowedly made not for the sake of the money, but to cast a stigma on the

vanquished party. The object of the statute was to prevent a defence arising from spleen or resentment. In this case neither were imputed to Mr. *Thellusson*. There was no complaint even of unnecessary delay. The Committee therefore could not grant this application, unless they were of opinion, that in every case where a Petitioner succeeded, the opposition to his petition ought to be reported frivolous and vexatious. But was such the humane principle of the law of *England*, or a fair construction of the act of parliament? What! because a man instead of pleading guilty to a charge, enters upon his defence, it is to be considered as an aggravation of his guilt, and he is to be punished for it. The Committee could not vote this defence either frivolous or vexatious.

Reply.—The Petitioner denied any intention of casting a stigma on Mr. *Thellusson*. As to the hardship of voting the defence frivolous and vexatious, and thereby punishing Mr. *Thellusson* for having defended himself, he could only say, that the

law had declared, that, circumstanced as he was, Mr. *Tbellusson* ought not to have defended himself. Nor was this a new case. On Thursday, the 13th March 1700, a petition of *Nathaniel Gould*, member for *New Shoreham*, was presented to the House, setting forth, " That through inadverten-
 " cy, and a mistaken apprehension of the
 " law, he had done that before the *teste*
 " of the writ, which may justly render him
 " liable to the displeasure of the House,
 " and that the thoughts thereof were so
 " afflicting that he rather chose to ac-
 " knowledge his error than seem to justify
 " the same by a defence, and therefore
 " with the greatest humility submitted him-
 " self to the justice and favour of the
 " House, humbly professing that the ex-
 " pence which he so unfortunately made
 " was entirely on his own account *." The House, on account of his humility, discharged him from being a member, without inflicting any further punishment. Mr. *Tbellusson* might have followed his exam-

* xiii Journals, 404-5.

ple: But his conduct was exactly the reverse; instead of acknowledging his error, and with humility submitting himself to the justice of the House, he rather chose, by a defence, to justify what he had done. This was an aggravation of his conduct, for which he ought to be punished.

When Mr. *Dallas* had concluded the case on the part of the Sitting Member, the Petitioner claimed a right to reply; but, after a short argument, the Committee determined, “*That Mr. TIERNEY be not heard in reply to Mr. DALLAS, he having called no witnesses.*” But it must be recollected, that the case turned upon matter of fact, and not upon a point of law; in which latter case, the Petitioner would have been entitled to a reply, although no witnesses had been called on the part of the Sitting Member *.

On Monday, the 7th of November, the fifth day, Sir *Edward Knatchbull* reported to the House, by the direction of the Committee, “That they had met that morning

* See the case of *Canterbury*, post.

“pursuant

“ pursuant to their adjournment of Sa-
 “ turday last, when the Committee re-
 “ ceived a letter from *Thomas Grenville,*
 “ Esq; the chairman, stating, that the
 “ death of a very near relation had made
 “ it impossible for him to attend the said
 “ Select Committee, and requesting that
 “ some member of the Committee would
 “ have the goodness to state to the House
 “ the cause of his absence, and to move
 “ the house, that his further attendance
 “ might be dispensed with; and that the
 “ said Select Committee then adjourned
 “ till to-morrow morning, ten of the
 “ o’clock.

“ The entry in the Journals of the
 “ House, of the 17th day of *February*
 “ 1791, of the proceedings of the House
 “ upon the report from the Select Com-
 “ mittee appointed to try and determine
 “ the merits of the several petitions, com-
 “ plaining of an undue election and double
 “ return for the borough of *Okehampton*, in
 “ the county of *Devon*, respecting the ab-
 “ sence of Mr. *Pybus*, was read.

“ Ordered, That the excuse now made,

“ on behalf of the said Mr. *Grenville*, for
 “ his non-attendance this morning, be al-
 “ lowed; and that he have leave to absent
 “ himself from any further attendance on
 “ the said Select Committee *.”

The next day Sir *Edward Knatchbull* was called to the chair, and continued in that capacity during the remainder of the trial of the petition.

At the close of the second day, the Petitioner called *Thomas Trowsdale*, who being sworn, stated, That on the 28th of *October* last, he served one *Alexander Morrice*, a brewer, personally with a Speaker's warrant, to attend this Committee. That last night also he left a notice at his house in *Thomas Street, Southwark*, for him to attend: he delivered it to his maid servant, who told him, that her master was not at home, but that he should have it. The Petitioner then said, that *Morrice* was a very material witness, and requested the interference of the Committee, in order

* Votes, 169.

to compel his attendance. The Chairman ordered another notice, signed by himself, to be left that night at the house of *Morrice*.

Friday, November 4th, third day. — The Petitioner renewed his complaint of the non-attendance of *Morrice*. *Thomas Trowsdale* deposed, that last night he delivered the notice, signed by the Chairman, to the wife of *Morrice*. She undertook that he should have it: she said he was in *Essex*, but she would send to him.

The Court being cleared, the Committee determined,

That the Chairman do report the case to the House.

On the same day, Mr. *Grenville* reported to the House, "That *Alexander Morrice*,
"having been duly summoned by the
"Speaker's warrant to attend to give evidence before the said Committee, had
"disobeyed such summons, and had not appeared in pursuance thereof."

The 10 G. III. c. 16. and 28 G. III. c. 52. were then read.

"Ordered,

"Ordered, That the said *Alexander Morrice* be, for his said offence, taken into the custody of the Serjeant at Arms attending this House, and that Mr. *Speaker* do issue his warrant accordingly *,"

Saturday, 5th November, fourth day.—
Mr. *Kelly*, one of the messengers of the House of Commons, informed the Committee, That he had called at the house of *Morrice*: his wife told him, that her husband was gone into *Essex* to make his annual round to gather money from his customers for porter. The Committee desired the messenger to endeavor to discover him, and bring him before the Committee.

Tuesday, 8th November, sixth day.—
The messenger informed the Committee, That the wife of *Morrice* had directed him to *South End*; and informed him, that she was to direct a letter to her husband at the *Anchor*, at *South End*, on *Thursday*. He

* Votes, 164.

waited

waited the *Thursday*, at *South End*, till the Post came in, but there was no such letter: he then enquired at every public house in the neighborhood which *Morrice* served with beer. He was told, that *Morrice* always sent word previous to his coming down: they had received no notice of his coming. The messenger returned to town this morning, and went to *Morrice's* house: he found that he was not returned, and that his wife was gone into *Lincolnshire*. A gentleman informed him, that on the *Tuesday* he had seen *Morrice* in a chaise, with a large portmanteau, and that he said he was going into *Kent*. The messenger asked directions how to act. The Chairman answered, that the business was in the hands of the House,

“ Friday, 2d December 1796. — The
 “ House being informed that *Alexander*
 “ *Morrice* had been taken into the custody
 “ of the Serjeant at Arms attending this
 “ House, pursuant to the order of the
 “ House of the 4th day of *November* last ;

“ Ordered, That the said *Alexander*

“ *Morrice*

" *Morrice* be brought to the bar of this
" House, upon *Monday* morning next *.

" *Monday*, 5th *December* 1796.—The
" order of the day being read, for bringing
" *Alexander Morrice* to the bar of this
" House;

" *Ordered*, That the said *Alexander*
" *Morrice* be now brought in to the bar.

" And he was brought in to the bar
" accordingly.

" And the said *Alexander Morrice* stand-
" ing at the bar, and the Serjeant by him
" with the mace, was informed by Mr.
" *Speaker* with the matter of the report
" which was made on the 4th day of *No-*
" *vember* last, from the Select Committee
" who were appointed to try and deter-
" mine the merits of the petition com-
" plaining of an undue election and return
" for the Borough of *Southwark*, viz. That
" he having been duly summoned by vir-
" tue of the *Speaker's* warrant, to attend
" to give evidence before the said Com-
" mittee, had disobeyed such summons, and
" had not appeared in pursuance thereof.

* Votes, 239.

" And

“ And the said *Alexander Morrice* was
“ heard.

“ And then he was directed to be taken
“ from the bar.

“ *Resolved*, That *Alexander Morrice*, hav-
“ ing been duly summoned, by virtue of a
“ warrant from Mr. *Speaker*, to attend as a
“ witness to give evidence before the Select
“ Committee appointed to take into con-
“ sideration the petition of *George Tierney*,
“ complaining of an undue election and re-
“ turn for the Borough of *Southwark*; and
“ having disobeyed the said summons, has
“ been guilty of a breach of the privilege
“ of this House.

“ *Ordered*, That the said *Alexander Mor-*
“ *rice* be again brought in to the bar to
“ be examined touching the cause of his
“ absenting himself from attending on the
“ said Select Committee.

“ The said *Alexander Morrice* was ac-
“ cordingly brought to the bar.

“ And then he was again directed to be
“ taken from the bar.

“ *Ordered*, That the said *Alexander Mor-*
“ *rice*

"*rise* be again brought to the bar of this

" House, upon *Thursday* morning next."

An order was also made for the attendance of a Captain *Bartlett* and Mr. *Henry Speck* *.

" Wednesday, 7th December 1796.—

" The House was moved, That the order

" made upon *Monday* last, for bringing

" *Alexander Morrice* to the bar of this

" House, to-morrow morning, might be

" read.

And the said order being read accordingly;

" Ordered, That the said Order be discharged †.

" Thursday, 8th December 1796.—The

" House was moved, That the resolution

" of the House of *Monday* last, ' That

" *Alexander Morrice*, having been duly sum-

" moned by virtue of a warrant from Mr.

" *Speaker*, to attend as a witness to give

" evidence before the Select Committee

" appointed to take into consideration the

" petition of *George Tierney*, complaining

* Votes, 254.

† Votes, 274.

" of

" of an undue election and return for the
 " Borough of *Southwark*, and having dis-
 " obeyed the said summons, has been guilty
 " of a breach of the privilege of this
 " House," might be read.

" And the same being read accordingly;

" Ordered, That the said *Alexander Mor-*
 " rice be, for his said offence, committed to
 " his majesty's gaol of *Newgate*.

" Ordered, That Mr. *Speaker* do issue his
 " warrants accordingly *.

" Ordered, That the orders of the day,
 " for the attendance of Captain *Bartlett* and
 " Mr. *Henry Speck*, be now read.

" And the said orders being severally read
 " accordingly;

" Ordered, That the said orders be dis-
 " charged †.

" Monday, 26th December 1796.—A
 " petition of *Alexander Morrice* was pre-
 " sented to the House, and read; Setting
 " forth, That the Petitioner having been
 " adjudged guilty of a breach of the privi-
 " lege of the House, was, by the warrant

* Votes, 283.

† Votes, 284.

“ of the Speaker, bearing date the 8th day
“ of *December* instant, committed to the
“ custody of the keeper of his majesty’s
“ gaol of *Newgate*, where he has remained
“ ever since ; and that the Petitioner, pre-
“ vious to such his commitment, had been
“ in the custody of the Serjeant at Arms of
“ the House for several days, whereby, and
“ by his present confinement, his health is
“ much impaired, and heavy expences have
“ accrued, which, through the deranged
“ state of the Petitioner’s affairs, he is
“ very unable to sustain ; and that the
“ Petitioner feels a just sense of the of-
“ fence for which he is confined, and
“ therefore prays the House to take his
“ situation into serious consideration, and
“ afford him such relief as to the House
“ shall seem meet.

“ *Ordered*, That the said *Alexander Mor-*
“ *rice* be brought to the bar of this House,
“ to-morrow morning, in order to his being
“ discharged ; and that Mr. *Speaker* do issue
“ his warrant accordingly *.

* Votes, 414.

“ Tuesday,

"Tuesday, 27th December 1796.—*Alexander Morrice* was (according to order) brought to the bar; where he received a reprimand from Mr. *Speaker*, and was ordered to be discharged out of custody, "paying his fees *."

On Tuesday, the 8th November, sixth day.—The Petitioner made a similar application to the Committee against *John Coffart*, another material witness. *Thomas Trowsdale* said, that he received a *Speaker's* warrant for *John Coffart*, and left it at his house, N° 3, *Clement's Lane*, on the 28th of October last. He saw his brother and partner, *Peter Coffart*, who told him his brother was out of town collecting: he did not tell him he was out of the kingdom, nor in what part of the country he was collecting, nor did he instruct him to leave the notice at any other place.

Richard Corner said, that, on *Wednesday* evening last, he received, at *Reading*, the *Speaker's* warrant for *John Coffart* to at-

* Votes, 420.

H

tend

tend the Committee. On *Thursday* morning he went to *Pangbourn*, about six miles from *Reading*, in a post chaise, in order to endeavor to serve it on *Coffart*, and bring him to town. He went to a Mr. *Martin's* at *Pangbourn*, where he was instructed *Coffart* was to be met with: he saw Mr. *Martin*, and learnt from him that *Coffart* had been there for some days, but had gone from *Pangbourn* on the *Saturday* preceding. He endeavored, but without effect, to get from Mr. *Martin* some information, in order to be able to trace whether *Coffart* was gone. Mr. *Martin* said, he left *Pangbourn* with an intention of going to *Birmingham*, but that he could not tell whether he was gone there; he believed he was gone to *Ireland*; so that the witness could find out no clue whatsoever whereby to find him.

Peter Coffart, his brother and partner, was examined with a view to discover where he was concealed. He prevaricated considerably, affecting not to know where his brother was, or to recollect any thing which was material.

The

The Committee refused to report *John Coffart* to the House, or to order him to be committed to the custody of the Serjeant at Arms, no summons having been personally served upon him; they only directed another summons to be left at his house.

When *Morrice* was brought to the bar of the House, he said, that he had been in *Ireland* on private business; that the perplexed state of his affairs forced him to be out of the way. He said, that he did not know he should incur the displeasure of the House by his absence: he however acknowledged his offence, and threw himself upon the mercy of the House.

The circumstance of two material witnesses withdrawing from the kingdom at the time when the petition came on to be tried, raised strong suspicions in the minds of many, and induced them to believe that they had been tampered with by the Sitting Member, or his agents, and prevailed on to absent themselves in order to deprive the Petitioner of the benefit of their evidence. It was intended thoroughly to investigate this business in the House,

but doubts being entertained, and after *Morrice* was brought to the bar, several difficulties started as to the regular mode of proceeding, he was remanded to the custody of the Serjeant at Arms, in order that precedents might in the mean time be searched. It was first proposed to examine *Morrice* himself touching the cause of his absence, but this was objected to ; it was contrary to the first principles of justice, to examine the accused as to his own guilt or innocence ; besides, it was holding forth an inducement to him to accuse others, in order to exonerate himself. It was then proposed to examine Mr. *Henry Speck*, the agent of Mr. *Thel-luffson*, and a Captain *Bartlett*, who were supposed to have persuaded him to abscond ; and they were accordingly both ordered to attend. But this also was objected to. If they had persuaded him to disobey the Speaker's summons, they also were guilty of a breach of privilege, and could not be examined as to their own criminality. Finally, it was thought best to commit him to *Newgate*, for the breach

of privilege, of which there was no doubt. From which confinement he was released three weeks after, upon petitioning the House, and acknowledging his offence.

It is much to be regretted, that no further steps were taken in this business. It becomes the dignity of the House of Commons, and interests the Public at large, that Select Committees be respected, and justice easily obtained before them. What a dangerous lesson these two cases hold out ! A candidate shall be guilty of the grossest corruption with impunity. Let him send away his agent before he has been personally summoned, no notice whatever will be taken of his absence ; and if he actually disobey a summons, the candidate has only to make him compensation for a short imprisonment, secure that there will be no further investigation into the causes of his disobedience.

When the first publican was called by Mr. *Tierney*, to prove that his house had been opened on the behalf of Mr. *Thel-
luffon*, the Counsel objected to his being

examined. Treating, they said, was an offence indictable at common law, as well as on the statute. Those publicans whose houses had been opened, were guilty of an infringement of the law, for which they might be indicted; and of a contempt of the House of Commons, for which they might be punished by the House. It was, therefore, calling the parties concerned in a criminal transaction to prove that transaction and to criminate themselves.

The Petitioner said, that the question for the Committee to decide was, Whether Mr. *Theelluffon* had opened houses and treated with a view to his election? There was no other way of coming at the fact. Others might have been witnesses or partakers of the entertainments, but the publicans alone could prove at whose expence, or on whose behalf they were given. In the *Norwich*, and several other cases, publicans under similar circumstances had been examined. He denied that it was criminal in a licenced publican to open his house to retail liquor; or that, by so doing, he could incur a contempt of the House. He instanced

stanced the case of *Smith v. Rose*. Mr. *Rose*, the Secretary of the Treasury, having, at the election for *Westminster* in 1789, opened the house of *Smith*, a publican, on behalf of Lord *Hood*, *Smith* brought an action against him in the court of King's Bench, and recovered the amount of his bill. The learned Judge, Lord *Kenyon*, before whom the cause was tried, would not have permitted him to recover had the opening his house been an offence either of common law, or on the statute. Nor did he find that either Mr. *Rose* or the publican had been punished for a contempt of the House of Commons *.

The Committee allowed the publicans to be examined; but determined,

That upon the question being put, the witnesses be cautioned not to answer any question that may criminate himself.

And upon the Petitioner asking a witness thus cautioned, "On what grounds he objected to answer a question?" The Committee determined, "That the ques-

* See note (B) at the end of the volume.

"tion was inadmissible if proposed with
"a view of asking from the witness,
"Why he thinks the answer will tend to
"criminate himself?" And accordingly,
the Chairman cautioned every witness, as
soon as he was sworn, and informed him,
"that he was not bound to answer any
"question, which, in his opinion, might
"tend to criminate himself."

This determination gave very general
dissatisfaction. As most of the witnesses,
called by the Petitioner, were, from the
nature of the case, adverse to him, it was
feared that they would shelter themselves
under this determination, and refuse to
answer any question which might impli-
cate Mr. *Tbellusson*, under the pretence that
in their opinion it tended to criminate
themselves. No doubt a witness is not
bound to answer any question which may
criminate himself; (that is to say) which
may subject him to a criminal charge, or
to the imputation of moral turpitude; but
what will or will not criminate, is a mat-
ter of law for the court, not for the wit-
ness to decide. To leave it to the opinion
of

of the witness, is to depart from the known and established rules of evidence and law, and to make the answer to each question depend on the ignorance, the fears, the passions, the prejudices, nay, even the integrity of the witness. High indeed are the sanctions of religion; but we should have little security for the veracity of many witnesses, unless these sanctions were enforced by the dread of the temporal punishments inflicted for perjury. No man can be indicted, or at least convicted, of perjury, in stating his opinion, because (however absurd the opinion) no jury can dive into a man's mind so as to say with certainty that he did not at the time entertain it.

William Jarrett, the cashier of the *Southwark Bank*, had been served with a Speaker's summons to attend the Committee, and to bring with him the books containing *Scriveners'* cash account about the time of the election. When called, he did not produce the books. He said, the same
books

books were still in daily use, and could not be brought from the office without considerable inconvenience and interruption to the business. As he was unable, from memory or recollection, to give any accurate statement of the account, the Petitioner requested the Committee would order him to bring them the next day. Mr. Dallas objected: he denied that the witness was bound to produce books. In the case of *Petrie v. Lord Porchester*, which was an action for bribery at an election, Mr. Henry Drummond, the banker, was examined. He said, that Lord Porchester kept cash at his house: that he had no recollection, either from memory or memorandum, of any particular draft of Lord Porchester within a year and a half; that he had been served with a *subpoena duces tecum* to bring his books; but, that if he had brought them all, there would have been several waggon loads, and that he could not bring them all. Mr. Justice Buller, who tried the cause, said, It had been so settled over and over again. Upon which the Counsel

Counsel for Mr. *Petrie* admitted the law, as stated by the learned Judge, and rested the case there *.

The Petitioner said, that the same point had arisen in the *Norwich* case. In that case, Mr. *Kerrison*, a banker, being examined on the part of the Petitioners relative to a subscription fund, a dispute arose whether the account current in the banker's books, containing the disbursements, should be produced; and, that Committee resolved, "That the account book should be produced, care being taken, to the banker's satisfaction, that no other article in the book be inspected but this in question †."

The Committee determined, "*That upon the Petitioner's specifying the books he wanted, the witness should produce the books themselves, or sufficient extracts from them.*"

On a subsequent day, he accordingly delivered in an extract, which he stated to be "An accurate copy, taken from the books of Mr. *Scrivener's* account with

* *Petrie's Cricklade case*, 82.

† 3 *Luders*, 450.

" the

"the *Southwark* Bank, with the period of
"the dates."

Thomas Andrews was called on the eighth day.—He had been in the Committee Room during the examination of several of the witnesses on the four first days: he was not summoned till the fourth day, and did not know till then that he was to be a witness. Since he was summoned, he had not been in the Committee Room, nor heard any witness examined.

The Counsel for the Sitting Member objected to his being examined. They said, it was a general rule in all Committees, that no person should be examined who had been present during any part of the examination of another witness. Notice of this rule had been pasted on the outside of the door; and, if the Petitioner's witnesses had not complied with it, he alone was to blame, and bear the inconvenience. To deviate from this rule, would set afloat all rules of law and practice adopted by Committees; it would open a door to end-
less

less perjuries, and occasion incalculable mischiefs.

The Petitioner answered, that *Andrews* had not been summoned till the fourth day, because till then he did not know that his evidence would be material; since that time, he had never been present in the room; he admitted the general rule, but this was a fair exception to it.

The Petitioner, in answer to a question from the chair, having said, that the evidence of *Andrews* was so material, that coupled with that of one other witness, it would in his opinion be sufficient to avoid the election; the Committee, after deliberation, determined, *That the witness, under the peculiar circumstances of the case, be examined.*

The rule above alluded to by the counsel for Mr. *Tbellusson*, and admitted by the Petitioner, is thus laid down by Mr. *Douglas*. “When a witness is under examination, all those who are intended to be called afterwards on either side are ordered to withdraw; after which, if they remain

"main in the Committee Room, their evidence will not be received *."

The first instance which I have been able to find of this rule having been enforced by Committees, is in the case of *Cardigan* in 1775. In the report of that case, it is stated, that "*Lewis Rogers* was "not admitted to give evidence, because "he had been in the room during the examination of other witnesses, and could "not say he was an agent on the trial of "the cause †." No mention is made of any other circumstances which might have weighed with the Committee in rejecting his testimony. In the *Worcester* case also, in 1776 ‡, the Committee would not permit one *Thomas Collins*, who had been in the room during the examination of other witnesses, to be called ; but he had been examined before to other points, in the course of which examination, he had prevaricated so grossly as to draw down the censure of the Committee ; and it was one of the arguments used against his being called, "that

* 1 Doug. 61. † 3 Doug. 229. ‡ 3 Doug. 239.

"after

“after having been censured by the Committee for prevarication, he certainly could not merit any credit from them *.” And after this, the *Worcester* Committee ordered a paper to be pasted on the door, to acquaint all persons with the rule. And this practice has been adopted by all subsequent committees.

On this subject, Mr. *Douglas* makes these forcible and appropriate observations :

“The effect of this rule is in a great measure lost, when a cause lasts for a number of days or weeks, for the witnesses have several ways of hearing what has been given in evidence before they are called, without coming to hear it themselves. Among the great concourse of people, who from curiosity or interest are constantly in the room, there are many, who, for the sake of conversation, and some, who, for worse purposes, relate what has passed. Copies of the minutes of each day being delivered to the agents on both sides, their contents transpire ;

* 3 Doug. 264.

“ and

“and the news-papers are also filled with
“a sort of daily history of the proceedings.
“Towards the end of this cause, several
“witnesses who came to contradict what
“had been sworn in the beginning, declar-
“ed, that what they knew of the evidence,
“they had learned by reading the news-
“papers in the country *.” These observa-
tions apply with peculiar force to the case
of *Southwark* ; being a case of very general
anxiety and expectation, the Committee
Room became a kind of fashionable lounge,
and was unusually crowded. Accounts of
the arguments and of the evidence, were
inserted in most of the daily papers ; so
that after a few days, little (if any) benefit
could be derived to either party, from a
strict adherence to the rule.

In my mind, the Committee judged wisely
in admitting the evidence of *Andrews*.
The rule, as laid down by Mr. *Douglas*,
cannot easily be reconciled to the princi-
ples or analogies of law ; if enforced to its
full extent, it must, in many instances, be

* 3 Doug. 265.

productive of injustice; the sitting member has but to bribe a few of the Petitioner's most material witnesses, to remain in the room while others are examined, and thus secures his seat, by depriving the Petitioner of the benefit of *their* testimony, who alone are able to prove the material points of his petition. It is a solid principle, established by Lord Chief Justice *Holt*, "That a person doing wrong himself, shall not injure an innocent man, by depriving him of the benefit of his testimony *." And in conformity with this principle, the *Sudbury* Committee, in 1780, allowed the Petitioner to call a witness, who had laid a wager of £. 40 on the event of the petition, although it appeared that he had voted for, and been an active friend of the Petitioner, and it was urged by the counsel for the sitting member, that his mind must be under a very undue bias, as such a sum of money was very considerable to a person in his situation. The courts of law invariably act upon this principle. The case of

* Quoted in the *Sudbury* case. *Phillipp's cases*, 197.

Doe, on the demise of *Good* and wife, against *Cox*, in the King's Bench, is directly in point. In Easter term, 30 Geo. 3. *Shepherd** shewed cause against a rule for a new trial. The cause had been tried at the preceding assizes for the county of *Surrey*, before Mr. Justice *Gould*. It appeared that, at the trial, the counsel for the lessor of the plaintiff, had desired that the defendant's witnesses might not remain in court while those of the plaintiff were examined. One of them having, nevertheless, remained in court, the learned judge refused to hear his evidence, deeming it on that account inadmissible. In support of his opinion he cited, in his report of the trial, the following passage from *Fortescue*, which, he said, shewed, that by the ancient practice, witnesses were always examined apart when there was reason to apprehend that they were not disposed to speak the truth; "*et si necessitas exegerit, dividantur testes hujus modi donec ipsi deposuerint quicquid velint, ita quod dictum unius, non docebit aut concitabit eorum alium ad consimiliter testifican-*

* Now Mr. Serjeant *Shepherd*.

"*dum.*"

"*dum* *." But the court were of opinion, that the witness ought to have been heard, and granted a new trial. However, as the defendant had been negligent in not keeping his witnesses out of court, when ordered so to do, they made him pay the costs of the new trial †. In the courts of criminal law, it is very usual to order out of court all the witnesses on both sides; and I am informed by persons the most conversant with the practice of the Old Bailey, that there have been instances, even in cases of life and death, where witnesses for the prosecution have been examined, though they remained in court subsequent to such order; but they have been, immediately after they have given their evidence, committed for the contempt, in remaining in court after they had been ordered out. All courts are so far judges of their own privileges, and entrusted with a power to vindicate themselves, that they may punish for contempts‡;

* Fortescue de laudibus, cap. 26, p. 58.

† This case is no where in print. I was favoured with it by a learned friend, whose accuracy as a reporter is too well established to need any commendation from me.

‡ Per Holt Justice. 1 Salkeld, 504.

but they cannot shut up the avenues to justice. They are bound to hear the merits of the case, though they may punish those who, by remaining in court, are guilty of a contempt of their orders. In the case of *Andrews*, there was no contempt; he had not been summoned, and at the time that he was present it was not intended to summon him; it was not even known that his evidence was material. Not to have admitted him, thus circumstanced, would have been a sacrifice of the ends to the preservation of the forms of justice.

In the course of the cross examination of *Wilkes*, he was asked whether he knew that the *Southwark* tavern in Tooley-street was opened for the reception of Mr. *Tierney's* voters.—The Petitioner objected to the question. He said the committee were sworn to try the merits of his petition, they could not travel out of it. As there was no allegation that he ought to have been returned, they could hear no recriminating evidence. Mr. *Tbelluffon* could not be permitted to vent his spleen against him, instead of defend—

defending himself.—On the other side it was contended, that in all cases of controverted elections, the Committee were bound to enter into the matter of defence as well as of charge. This was a part of Mr. *Thellusson's* defence. Besides they had a right to ask the question, with a view to try the credit of the witness; if he denied the fact, and they proved it, it would materially affect his credit.—The Committee determined, *That the question may be put.* But one of the Committee observed, that this examination was to be proceeded in only so far as was necessary to try the credit of the witness, and not by way of recrimination.

IN consequence of the determinations of the Select Committee, and the orders of the House made thereupon, as mentioned in a preceding page, a new writ was immediately issued, for the election of a burgess to serve in parliament for the Borough of *Southwark*, in the room of Mr. *Thelluffson*. The election commenced on Friday the eighteenth day of November, and continued till the Tuesday following, the 22d; on which day it concluded, having lasted four whole days, exclusive of the intervening Sunday. Mr. *Thelluffson* and Mr. *Tierney* again were candidates; and although Mr. *Tierney* gave repeated notice to the returning officer and to the electors, of the ineligibility of his opponent, on account of the resolution of the House on the subject of his conduct at the former election, yet that gentleman persisted in demanding a poll; and, at the close of it, was returned by a majority of 163 votes; there being in his favor 1,182, and only 1,119 in support of Mr. *Tierney*.—Upon the return of Mr. *Thelluffson* being announced to the electors, Mr. *Tierney* informed them, that he should immediately petition the House of Commons against this second return; and assured them, that according to the laws and custom of parliament, there was no doubt of his being declared their legal representative. This second petition he accordingly presented a few days after. The trial of that petition is the subject of the following pages.

But

But before we enter thereupon, a short and general account of these two elections, may perhaps be neither unacceptable nor even uninstruative to the reader. The following Tables will shew, in one point of view, not only the state of the poll at both elections, but also the progress of political virtue in *Southwark*, during the short period which elapsed between them. To a liberal mind it will be a consolation, to observe a virtuous cause, by dint of perseverance, rapidly increasing; its adherents surmounting every difficulty which it had to encounter, triumphing over its opponents, and eventually succeeding in spite of all the arts of corruption,

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TABLE I.

THE FIRST SOUTHWARK ELECTION began 25th May, 1796.

HENRY THORNTON,

GEORGE TIERNEY,

GEORGE WOODFORD

Esquires, Candidates:

[illegible]

From the above Table it appears, that at the first election, the total number of votes for all the three candidates were 2,319. That of these, 1,373 polled for Mr. *Thellusson*, and only 976 for Mr. *Tierney*, being a majority of 397 in favor of Mr. *Thellusson* above Mr. *Tierney* *.

Great as this majority may appear at first sight, yet it excited the surprise both of the friends and opponents of Mr. *Tierney*, to find that he had polled so many; and that surprise was considerably increased when it was known that of the 976, of which his number consisted, 560 were single votes. Mr. *Tierney* had no influence at command; he was a stranger in the Borough; he was so little acquainted with those who supported him, that he had not even the advantage of a regular committee. He had no tried friends to canvass for him, or to give him their interest; no expence was incurred; and small were the pains taken to solicit votes in his behalf. None of the usual petty electioneering arts were practised; no false professions; no concealment of principle, in order to conciliate men of different and discordant sentiments. He made it no party question; he boldly stood forward the champion of reform; and that no doubt might be entertained of his principles, he openly avowed them. On his flag was painted, "*Peace and Reform against War and Corruption.*" Before the commencement of the poll, he informed the electors from the hustings, that he solicited their votes upon that principle alone; he desired that no one would vote for him who was not friendly to a parliamentary reform; and, added, that he should

* I have throughout these remarks taken no notice of the votes given to Mr. *Thornton*, he not being implicated in the contest.

consider

consider every vote tendered for him, as a pledge of the sincerity of the voter in that important cause, which he considered as essential to the present safety of the state; to the recovery of the liberties of the people; and the future well-being and existence of the empire.

Southwark had long been considered a pocket and venal borough of the treasury. Government has at all times, from various palpable causes had means more ample there, than in almost any other place, of conciliating friends and fixing adherents. Nor had these means been neglected by the present administration. To attack corruption in its very citadel, and amidst the holds and fastnesses of the treasury, was certainly a bold, to many seemed a rash and desperate attempt. But as the race is to the swift, so the palm of victory is only to the bold. Mr. *Tierney* felt that he risked nothing; he might, indeed, be defeated, but he could not be disgraced. The event, however, exceeded the most sanguine expectations of himself and of the friends of reform. That the 560 persons who polled singly for him, were determined parliamentary reformers, could admit of no doubt, after the explicit language which he had held from the hustings; and if the other 416, who voted jointly for him and Mr. *Thornton*, were not so determined, yet it was evident that they were not hostile to the cause*. This was of itself a triumph. More could not reasonably be expected, in the then situation of the

* Mr. *Thornton* has always professed himself to be a friend to a reform in parliament, of some kind or other. At the close of the last day's poll, he stated himself to be friendly to a moderate reform, at a proper time. He has since voted in parliament for the reform proposed by Mr. Grey, on the 26th day of May last.

country at large, and the peculiar local circumstances of *Southwark*.

There is something in virtue, and in virtuous principles, so intrinsically beautiful and enchanting, and so naturally attractive, that it is impossible to resist their influence for any length of time. It has been remarked somewhere by *Rousseau*, that the most profligate and abandoned, will at the recital of a virtuous deed, discover sensations of pleasure; and that they are unable to suppress or conceal an involuntary emotion of horror, at the sudden mention of a crime in which they have no interest or participation*. Virtuous actions necessarily please the most indifferent to virtue. Perseverance in them begets admiration. Man is naturally inquisitive. To a sterile admiration, succeeds an investigation of the principles by which these actions are directed. An adoption of the principles soon follows, and the man is roused into an active imitation of the conduct he began by admiring. Such is the nature of the human heart. Such the natural progress of virtue.

It is with political as with moral virtue; the enemies as well as the friends of reform were sensible of this indisputable truth. To stop, therefore, this rising spirit of political virtue in the Borough, they omitted the

* The Poet carries this idea further:

————— Hum! I have heard

That guilty creatures, sitting at a play,
Have, by the very cunning of the scene,
Been struck so to the soul, that presently
They have proclaimed their malefactions;
For murder, though it have no tongue, will speak
With most miraculous organ. ———

HAMLET.

practice

practice of no arts, whether of persuasion or of threat; no present corruption; no promise of future favor. Nor were they backward in calumniating Mr. *Tierney* and his friends, and misrepresenting their principles, as calculated to destroy the blessings of liberty and order, and tending to introduce the mischiefs of anarchy and confusion in their room. But,

Shall folly and sophistry hope to prevail,
Where reason opposes her weight?

As well might the false glare of the meteor, which misleads us in the night, attempt to vie in brightness with the rising sun, as the sophistry of corruption contend with the principles of political liberty, and the arguments in favor of reform.

Such were the feelings of the friends of reform in *Southwark*, and such the conclusions which they drew from the event of the first election. They entertained no doubt, but that whenever another election should take place, they should find the number of their friends considerably increased. That they were not mistaken in their conclusions, appears from the following Table;

TABLE

The whole will be placed in a more perspicuous point of view, by the following comparative Table of the sums total in the foregoing Tables :

TABLE III.

Comparative Table of the Sums Total in the two foregoing Tables :

	First Election.	Second Election.	Difference.
Total number of votes -	2,329	2,401	72
Total D ^s for Thellusson -	1,373	1,282	91
Total D ^s for Tierney -	976	1,119	143
Majority - - -	397	163	234

From these Tables it appears, that although 72 persons more voted at the second than at the first election, yet 91 persons less polled for Mr. *Thellusson*; and, that though he still retained a majority, yet that majority was lessened by 234; while, on the other hand, Mr. *Tierney*'s numbers had increased by 143. So that in the space of six months which had intervened, the principles of parliamentary reform had made such progress in *Southwark*, as to gain over 143 of the advocates of corruption, and enroll them under the banners of

of reform. Thus has been formed in *Southwark*, in the very face and in spite of all the efforts of administration, a firm and undaunted phalanx of at least 1,119 determined parliamentary reformers. No inconsiderable body in a Borough, where the utmost number of electors does not exceed 2,400 *. May their numbers continue to increase. May their bright example be followed in every Borough in the kingdom. Let the principles of reform be not only professed, but every where boldly acted upon, and there may still be a chance of salvation to the country. Then, and not till then, shall we see

— Britannia dauntless rise,
Cheer'd with triple harmony;
Monarch good, and *nobles* wise,
People valiant, firm, and FREE †.

I cannot conclude this article without remarking, that the only candidate and electors, whose independent conduct at the last general election, in not only checking, but (by rendering unpopular the practice of treating ‡) in some measure destroying, the baneful disorders of contested elections, merited and gained the applause of all ranks and descriptions in the country, are Mr. *Tierney* and the electors of *Southwark*. And let this

* It appears that at the second election, 2,401 polled, but there were necessarily several bad votes on each side.

† Sir William Jones.

‡ Notwithstanding the great scarcity, bordering on famine, which prevailed during the time of the first *Southwark* election, Mr. *Tbelluffon* became unpopular, even among the lowest and poorest ranks of the people, merely from the circumstance of his treating; they considered it as an insult to them. And whenever he or his friends appeared, they were always saluted with the words, *No Tbelluffon! No dog's meat!*

unmeant tribute of public respect, to the too often calumniated society of the "*Friends of the People*," never be forgotten. For as the *Southwark* election has alone obtained the general approbation, so it was the only election avowedly conducted on the principles of that society. A tree (we are told) is known by its fruit. Such are the fruits which that society has produced. It is a heartfelt satisfaction to me, to have been one of its members; and I feel no small degree of pride in having contributed my humble mite towards the success of the two *Southwark* elections.

* The society of the Friends of the People, associated for the purpose of obtaining a parliamentary reform, established on the 11th of April 1792.—The society met at the Free Masons tavern.

The Petition was presented on Tuesday the 25th day of November 1796, and was then ordered to be taken into consideration on Tuesday the 18th day of December following. On Monday the 12th day of December that order was discharged, and the consideration of the Petition was deferred till the Friday following; on which day the Committee was appointed, and consisted of the following Members: **THE**

The Hon^{ble} Edw. J^r. Elliot, Esq.
Chairman
William Joseph Denison, Esq.
John Spalding, Esq.
George Portier, Esq.
James Adams, Esq.
Sir William Wallis Wynne Bart.
Francis Fane, Esq.
Wm Cunningham, Esq.
Lord Charles Henry Somerset
Napier Christie Burton, Esq.
Lord Evelyn James Stuart
Sir John Philip Leicester Bart.
Lord Portchester
Charles Dundas, Esq.
John Ashurst Esq.

SECOND CASE
OF
THE BOROUGH
OF
SOUTH WARK,

IN THE COUNTY OF SURREY
In the County of Surrey
John Ashurst Esq.
George Wood Esq.
1796
The Petitioner had no Counsel.
Agents for the Petitioner,
Messrs. Wallis and Troward, Norfolk-street; and
Messrs. Atcock, Southwark.
Counsel for the Sitting Members,
Mr. Dallas.
Mr. Sergeant Heywood.
Mr. Henry Spence Southwark.

The PETITION was presented on Tuesday the 29th day of November 1796, and was then ordered to be taken into consideration on Tuesday the 13th day of December following On Monday the 12th day of December that order was discharged, and the consideration of the Petition was deferred till the Friday following; on which day the Committee was appointed, and consisted of the following Members:

The Hon ^{ble} Edw. Ja ^s Elliot,	} Members for	Liskeard.
Chairman		
William Joseph Dennison, Esq.		Camelford.
John Spalding, Esq.		Wigtown, &c.
George Porter, Esq.		Stockbridge.
James Adams, Esq.		Bramber.
Sir Watkin Williams Wynne, Bart.		Denbighshire.
Francis Fane, Esq.		Dorchester.
Wil ^m Cunningham Bontine, Esq.		Dumbartonshire.
Lord Charles Henry Somerset		Scarborough.
Napier Christie Burton, Esq.		Beverley.
Lord Evelyn James Stuart		Cardiff.
Sir John Flem. Leicester, Bart.		Heytesbury.
Lord Porchester		Cricklade.
Nominee for the Petitioner,		
Charles Dundas, Esq.		Berkshire.
Nominee for the Sitting Member,		
John Anstruther, Esq.		Anstruther, &c.

PETITIONER,
George Tierney.

Sitting Member,
George Woodford Thellusson, Esq.

The Petitioner had no Counsel.

Agents for the Petitioner,
Messrs. Wallis and Troward, Norfolk-street; and
Mr. Alcock, Southwark.

Counsel for the Sitting Member,
Mr. Dallas. Mr. Serjeant Heywood.

Agent,
Mr. Henry Speck, Southwark.

THE
SECOND CASE

OF

THE BOROUGH OF SOUTHWARK.

THE Committee being met on Saturday the 17th day of December, 1796, the petition of *George Tierney* was read, setting forth, "That His Majesty, as appears by a certain writ directed to the sheriff of Surrey, bearing date on or about the 21st day of May 1796, did, by the advice and assent of His Council, for certain arduous and urgent affairs concerning the state and defence of the kingdom of Great Britain, and the Church, order a certain parliament to be holden at the city of Westminster, on the 12th day of July last past, there to treat and have conference with the prelates, great men, and peers of the realm; and did, by the writ aforesaid,

bearing date as aforesaid, command and strictly enjoin the said sheriff of the county of Surrey, that of every borough in the same county, two burgesſes of the moſt ſufficient and diſcreet, freely and indifferently, according to the ſtatutes in that caſe made and provided, he ſhould cauſe to be elected, and that the names of thoſe burgesſes, ſo to be elected, he ſhould cauſe to be inſerted in certain indentures, to be thereupon made, between him and thoſe who ſhould be preſent at ſuch election, and them, at the day and place aforesaid, he ſhould cauſe to come in ſuch manner, that the ſaid burgesſes for the ſaid boroughs reſpectively might have from them, full and ſufficient power to do and conſent to thoſe things, which then and there, by the common council of the kingdom, ſhould happen to be ordained upon the aforesaid affairs, ſo that for want of ſuch power, or through an improvident election of the ſaid burgesſes, the aforesaid affairs might in no ways remain unfinished; and that the ſaid parliament, ſo ordered to be holden in the city of Weſtminſter, was, by ſeveral

several writs, prorogued to and until the 27th day of September last past, and was there then holden; and that the said Sheriff of Surrey did, in obedience to the aforesaid writ, direct his precept to the bailiff of the Borough of *Southwark*, in the said county, who, in obedience to the same, did proceed to the election of two burgesses to serve in parliament for the said Borough: That at the said election, *Henry Thornton* and *George Woodford Thelluffon*, Esquires, and the Petitioner, were candidates; and that the said *Henry Thornton* and *George Woodford Thelluffon* were, by a certain indenture, declared to have been freely and indifferently chosen, according to the tenor and effect of the aforesaid precept; and that the Petitioner did immediately, upon the assembling of the parliament so commanded to be holden as aforesaid, present a certain petition to the House, questioning and complaining of the return of him the said *George Woodford Thelluffon*, and alledging him to have offended against the standing order against bribery, made by the House of Commons, in the year

1678, and also against the act of parliament of the 7th of king *William the Third*, chapter the fourth, and confining the allegations of the said petition to the said offences alone; and that the matter of the said petition was referred to a Select Committee of the House, who, upon hearing of evidence in support of the allegations aforesaid, determined, that the said *George Woodford Thelluffon* was not duly elected; and that a certain writ, bearing date the 12th day of November last past, was directed to the sheriff of the county of Surrey aforesaid, reciting, 'That *George Woodford Thelluffon* was lately chosen one of the burgesses for the said Borough of *Southwark*, and that the Lower House of Parliament have adjudged the election of the said *George Woodford Thelluffon* to be void,' and commanding the said sheriff, that, in the place of the said *George Woodford Thelluffon*, within the Borough aforesaid, one other fit and discreet burgess of the aforesaid Borough, freely and indifferently, by those who should be present at the proclamation, he should cause

to be elected; and that the Petitioner and the said *George Woodford Thelluffon* were again candidates at such renewed election, and that the said *George Woodford Thelluffon* was, by a certain indenture, declared to have been freely and indifferently chosen, according to the tenor and effect of the aforesaid writ; and that the Petitioner is advised, that the said *George Woodford Thelluffon* was not capable of serving for the said Borough, on the said renewed election, and that notice having been duly given to the returning officer, and the electors present at the proclamation, of such incapacity in him the said *George Woodford Thelluffon*, the Petitioner, he standing next upon the poll, ought to have been returned; and the Petitioner affirms, that the said *George Woodford Thelluffon* was not freely and indifferently chosen, according to law, and the tenor and effect of the writs hereinbefore recited; and that it appears by a report made to the House, respecting the pretended election of the said *George Woodford Thelluffon*, that the said *George Woodford Thelluffon* did act in violation

lation of the statute of the seventh of *William the Third*, chapter the fourth: whereby he was incapacitated to serve in parliament upon such election. The Petitioner humbly submits to the House, and is ready to shew, that, by the true construction of the said act of king *William*, resolved to have been so violated, and by the law and usage of parliament, the said *George Woodford Thellusson* could not, legally and constitutionally, take advantage of a vacancy in the representation, occasioned by offences of the nature of those declared to have been committed, such offences having been declared to have been committed by himself; and that the said *George Woodford Thellusson* did endeavour to obtain the seat he now occupies in the House, by a breach of the resolution of the House against bribery, made a standing order in the year 1678; and by a violation of an act passed in the seventh year of the reign of king *William the Third*, chapter fourth, and is therefore to be deemed and taken no member, and ought not, according to the provisions of the said act, to have any vote or place in the parliament;

ment; and that, at the said last election for the Borough of *Southwark*, a large body of men, consisting chiefly of persons known by the description of prize-fighters, did obstruct the poll, and did, by their outrageous conduct, intimidate quiet and well-disposed persons from attempting to vote; and that the said body of men were paid by persons in the interest of the said *George Woodford Thellusson*, and did wear the cockades of the said *George Woodford Thellusson*, and attack and ill treat such electors as appeared anxious to vote for the Petitioner, in a manner dangerous to the public peace, and subversive of the freedom of election; and that *William Jones*, esquire, the marshal of the King's Bench prison, was an active partizan of the said *George Woodford Thellusson*, and, as such, did bring to the poll, in favor of the said *George Woodford Thellusson*, a great number of persons who were confined for debt within the said prison, or the rules thereof, the votes of which said persons the said *William Jones* did procure to be put upon the poll for the said *George Woodford Thellusson*,

33 *Tbelluffon*, although such persons by law had no right to vote at such election; and that the returning officer, at the last election for the Borough of *Southwark*, did (but the Petitioner does not mean to attribute it to any corrupt or improper design) admit many persons not duly qualified, to vote for the said *George Woodford Tbelluffon*, and reject many good votes tendered for the Petitioner; and that gross and scandalous bribery was practised at the last election for the said Borough of *Southwark*, whereby votes were procured in favour of the said *George Woodford Tbelluffon*, and many electors, in the interest of the Petitioner, induced to withhold their votes; and that by these and other illegal means, the said *George Woodford Tbelluffon* did procure a colorable majority upon the poll; but that the majority of legal votes was in favour of the Petitioner, who ought to have been returned to serve in parliament for the said Borough; and therefore praying, that an early day may be appointed to take the premises into consideration, and that he may
be

be granted such other relief as to the House shall seem meet *."

The last determination as to the right of election † was then read, as was also the standing order of the House for restraining counsel ‡.

The Petitioner then opened his case nearly as follows :

It is now my fate a second time to appear in person, before a Committee of the House of Commons, in defence of the rights and privileges of the inhabitants of *Southwark*. Although, from past experience, I have no doubt but that impartial justice will be administered, yet I feel my situation to be so peculiar as to require both apology and explanation. I shall offer to you the same as to the former Committee. If the reasons which pressed upon me two months ago were deemed sufficient by them, surely you will consider them as an ample apology at present, when they press upon me with more than double force. If a repetition at

* Votes, 219.

† See ante, 10.

‡ See ante, 10.

the last election of the same honorable and independent support, has increased my debt of gratitude to the inhabitants of *South-wark*, and laid me under additional obligations to stand forward in defence of their rights; on the other hand, the costs of the trial of my last petition, impose on me a no less sacred duty to my family, to avoid as much as possible every expence which is not absolutely necessary.

Before I proceed to open the subject matter of my case, it may be necessary to recapitulate a few of its leading circumstances. Previously to the last general election, I was invited to become their candidate, by several respectable electors of the Borough. I answered, that I had resolved never to be at any expence in parliamentary pursuits. They approved my resolution; they said that they invited me because they understood my principles to coincide with their own, and that they would give me an independent support, without any expence whatever to myself. Upon these terms we closed and I accepted their invitation. Mr. Alderman *Le Mesurier* immediately

diately retired, fearful of the expence and confusion of a contest. Mr. Thornton and myself were then the only candidates. Though supported by two opposite interests we were not competitors; where there are two seats only and but two candidates, there can be no competition. Instead of attempting a trial of strength, each party seemed inclined to preserve the peace and tranquillity of the Borough, and to avoid, if possible, the extravagance and debauchery of a contested election. Each party proceeded upon motives of economy; but, unfortunately, there exists in *Southwark* another set of men, not quite so fond of peace and tranquillity; they were alarmed at Mr. *Le Mesurier's* retreat; they feared their septennial harvest was gone for this season, and that they should not be able to fill their granaries for seven years to come. Luckily for them, at the last general election, a mania, such as was never hardly known before, had seized the merchants of the city, to exchange the toils of the counting-house for the duties of legislation. Profiting of this new rage, they turned their

their eyes to Mr. *Tbelluffon*, and invited him to become a candidate for *Southwark*. He immediately accepted their invitation; and, untaggered by any consideration of expence, in violation of all law, and in defiance of all decency, by the means of a prodigality and profusion, unexampled even in the annals of parliamentary corruption, he contrived to carry his election.

At the close of the election, I felt that even if I had a majority of legal votes, I had neither strength of body nor length of purse sufficient to go through the drudgery and expence of a scrutiny; but still I felt myself bound to do something, not only in gratitude to the inhabitants of *Southwark*, but also from a love to the constitution, which had been so grossly violated. I knew all the disadvantages under which I labored; I was acquainted with the combinations formed against me, and was aware of the difficulties which I had to encounter; but I was not deterred. I presented a petition on the statute of the 7th of king *William* the Third, the best security for the freedom of election. Before a Committee

mittee like yourselves, I proved the facts alledged in my petition, and I of course succeeded. That Committee never will be mentioned by me, but in the highest terms of gratitude and respect: but they can be little benefited by my applause; their fame depends not on my praise; they have a much higher title, and a more substantial reward; men of all parties and of all descriptions throughout the kingdom bless them for their decision, nor can they have any enemies, excepting among those who, devoid alike of character and principle, entirely depend for their consequence upon their means of purchasing it. Of that Committee it may be truly said, "Recorded honors shall gather round their monument and thicken over them. It is a solid fabric, and will support the laurels that adorn it *."

They were not content with declaring Mr. *Tbelluffon's* election void. Feeling how important it was to the general interest of the country, and to the preserva-

* Junius, Letter 54.

tion of the morals of the people, they went further, and marked their opinion of his conduct by a special resolution, which they reported to the House, they resolved, "That it appears to this Committee, that at the last election for the Borough of *Southwark*, *George Woodford Thelluffon*, esquire, did act in violation of the statute of the 7th of *William 3*, c. 4. whereby he is incapacitated to serve in parliament upon such election *."

Thus he was by that Committee recorded a violator of the law. I hoped that he would have been sensible of his situation; that he would have had the decency, not again to present himself to the choice of the inhabitants of *Southwark*; and that he would have felt, that a recorded violator of the law was not qualified or fit to be a maker of law. But, unfortunately, this decision made no impression on his mind. The very night on which the Committee came to it, he published an advertisement, in which, in downright contempt and open

* Ante, 180.

defiance of their determination, he impudently rests his claim to the support of the electors of *Southwark* on his attachment to the constitution and our sacred laws. A second election soon after took place, and Mr. *Tbelluffon* was again returned. Against that return I have petitioned: on the merits of that petition you are now empannelled to determine.

By the rules of the House, the time for petitioning is limited to fourteen days after the return; and, if the Petitioner has reasonable grounds to suppose, that he may be able to establish a material fact against the Sitting Member, it is necessary for him to charge it in his petition, by way of laying in a claim to prove it before the Committee, in case the fact turns out as was at first reported.

Such is the constant practice; for that reason, my petition contains a variety of allegations; but I shall not trouble you with evidence in support of them all. I shall offer no evidence to prove (whatever I may think upon that head) that I had a majority of legal votes. The prisoners for debt, who live within the rules, but without

the walls of the King's Bench prison, are, I understand, about seventy in number. Though they have no right to vote *, they all polled for Mr. *Tbelluffon*. But were they all struck off the poll, still Mr. *Tbelluffon*'s majority would not be sufficiently reduced, nor could I sufficiently reduce it without the fatigue of a scrutiny, to which my bodily strength is inadequate; I therefore abandon this allegation; I abandon also the charge of specific bribery. I certainly have many proofs of bribery at the last election, yet, whatever my suspicions may be, as I cannot bring it home directly to Mr. *Tbelluffon*, to enter upon an investigation of that charge would be wasting your time in an useless enquiry; I therefore think it my duty to abandon it.

But there is another allegation in some measure connected with the last but one, and which involves a constitutional question as well as the honor of the House. You will determine, whether, in defiance of the standing resolutions of the House of Commons,

* See note (C) at the end of the volume.

the marshal of the chief justice of the court of King's Bench, and keeper of the prison of that court, shall be allowed to take an active part as an election agent; to use his powers of office in support of the candidate, whose cause he chooses to espouse; and to boast publicly, with impunity, of the number of bad votes which he has polled in his support. I feel it to be a duty which I owe to the public, to tender evidence on this charge, and to shew that I neither hastily introduced his name in the petition, nor was actuated by spleen or resentment against him. I am ready to prove the whole of what I have alledged on this head, and have no hesitation in asserting, that his conduct was, throughout, a gross and scandalous violation of the freedom of election.

Two more allegations remain; first, the obstructions to the poll. This is a most grave and serious charge, which I would not have lightly made, and which I therefore shall not abandon. I feel myself called upon to shew the shameful means by which Mr. *Tbelluffon* obtained his majority.

I shall shew that a most deliberate conspiracy was formed to destroy the freedom of election; that for this purpose, notorious bruizers, and prize-fighters by profession, were hired, and engaged at a fixed daily stipend. They were regularly marshalled, and were instructed to prevent by violence, and even by the means of bloodshed, if requisite, the voters in my interest from getting up to poll. A public-house was allotted for their entertainment and reception. There was indeed another set of men also in that house. The magistrates of *Southwark*, all of whom were in the interest of Mr. *Tbelluffon*, fearful (I suppose) lest any breach of the peace should take place, thought proper, without the knowledge or consent of the returning officer, to swear in an extra number of extraordinary constables. These also were entertained in the same house as the prize-fighters. Strange as it may appear, it is no less true than strange, and I shall prove the fact, that at the *White Horse* in *Union-street*, a room to the left was set apart for the boxers hired to break the peace; in another room to the right,

right, were the constables sworn to preserve it. 2

The most material point remains; namely, whether a person with a conviction of bribery and treating staring him in the face, and before the record of it is dry, shall be allowed to return as a candidate to the scene of his offences, and there reap the benefit of his former corruption. Many persons, I admit, have made similar attempts; but in such a situation, to ground one's claim to support on an attachment to the king, the constitution, and our sacred laws, is a refinement in electioneering profligacy, and a contempt for the feelings of mankind, hitherto unknown in practice, and reserved for the corruption of the present day. I for one doubt much the sincerity of Mr. *Thellusson's* attachment, either to the king, to the constitution, or the laws, except in as much as he can render them subservient to his interests and ambition. For my part, I respect the king, I love the constitution, and obey the laws; but my attachment to them is far different from that of Mr. *Thellusson*. I have shewn my

love for the constitution, by defending it against attacks upon the freedom of election; my veneration for the laws, by pursuing him to conviction, who dared to violate them openly. Of my respect for the king I shall make no vain parade; it will best appear when occasion shall require it; but to ingratiate myself with the crown, I never will consent to surrender an atom of the constitution.

The conduct of Mr. *Tbelluffon* seems indeed to be a master-stroke of boldness and policy; he knew that, in point of law, a violation of the statute of king *William* worked an incapacity, and that consequently he was incapable to sit in parliament. But he is not a man to be deterred by trifles; having once violated the law, he was determined to put in issue the whole constitution; he therefore got returned, in hopes of finding a Committee weak or profligate enough to be persuaded to suspend the operation of that wholesome statute, and thereby break down all the guards and fences of the constitution. You, however, are no such Committee; it is for you

to determine what is the law and constitution of the land; you are an English jury to decide this question; amongst you is an English judge, accustomed to expound the laws *. I have no anxiety as to your decision: in such hands the constitution is safe, and will long survive the attacks of such men as Mr. *Thellusson*.

I shall divide my subject into two parts; first, I shall ask for your decision on Mr. *Thellusson*'s eligibility. You have in court the record of his conviction. There needs no further evidence to avoid this election. The subject of a special report of this nature, I conceive, by the law of the land as well as by the law of parliament, to be perfectly ineligible, and if elected, incapable to sit in parliament by such election. This appears both from the statute of king *William* and the standing order of the House. Can such a person be one of the most *fit* and *discreet*? Can he be said to be *freely* and *indifferently* chosen?

Having proved his ineligibility, I must shew, that previous to the commencement

* Mr. Anstruther, Chief Justice of Anglesea, &c.

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of the poll I gave to the electors sufficient notice, and then by the law of parliament I must be declared the Sitting Member. If, however, I shall be so unfortunate as not to convince you of his ineligibility (which however I cannot suppose) it will then be necessary for me to proceed to the proof of the next charge, *viz.* the wicked conspiracy, I have already mentioned, to obstruct the poll and violate the freedom of election. If I succeed in proving this, then likewise you must declare the election void.

My object, therefore, is two-fold ; first to shew that I ought to be the Sitting Member, on account of the ineligibility of my opponent ; and 2dly, if I fail in this, to bring evidence to avoid his election. I wish, in the first instance, for your decision on the question of ineligibility, because it will save much time. If you shall be of opinion, that he is ineligible, there will be an end of the cause. There are many precedents for this mode of proceeding : in the case of *Honiton*, in 1782, it appeared, that at the general election in 1780, Mr. *McLeod* had

had been returned, but that on a petition being presented against him, the Committee determined, that he was not duly elected. A new election being ordered to supply the vacancy, Mr. *Wilkinson* opposed him, and was returned. Mr. *M'Leod* petitioned. On the trial of that petition, the counsel for the Sitting Member objected to Mr. *M'Leod's* going into any evidence of his case, contending that his former return had been avoided for bribery, and that he was therefore ineligible to supply the vacancy ; on the other hand, the counsel for the Petitioner argued, that the Sitting Member had no right so to interrupt the due course of proceeding, and that the Committee were bound in justice and duty to hear the whole of their case, before the other party could be admitted to state his defence ; but the Committee allowed the Sitting Member to produce evidence of the ineligibility of Mr. *M'Leod* ; and the fact having been established to their satisfaction, they resolved, " that Mr. *M'Leod* was not " eligible to fill the vacancy ;" and without permitting him to go into any proof of the
allega-

allegations of his petition, determined, "that
"the Sitting Member was duly elected *."

To proceed therefore on this head. The
offence of which I complain is no less than
bribery. It is declared to be so by the resolu-
tion of the House, and such also is the form
and construction as well as the intent and spirit
of the treating act. It has been thus confi-
dered by every writer on the subject, and has
been stigmatized as such by the current of
law authorities, and by several resolutions
of the House. Bribery is a crime so hei-
nous in its nature, and so destructive of the
purity and freedom of election, that the
House has at all times particularly set its
face against it. Towards the end of the
reign of *Charles* the Second, owing to the
great influx of wealth into the country, it
grew to an enormous size, and assumed va-
rious shapes and disguises. Bribery, in the
shape of treating, had risen to an alarming
height. The extent to which it had arrived,
and the danger apprehended from it, may
be gathered from a perusal of the notes of

* 3. Luders, 162. See also note (D) at the end of
the volume.

Whitelocke. Whatever might have been his political opinions, he cannot, in this book at least, be suspected of any violent leaning towards popular right, as opposed to the claims of prerogative. Although his work was written during the reign of *Charles the 1st.* it was not published till after the restoration, and was dedicated to *Charles the 2d.* as an atonement for his former conduct, in having sided with *Cromwell.* In the dedication, he with gratitude acknowledges the king's mercy "in not taking from him his "fortune, liberty, and life," and states, that in return he publishes this work "in vindication of his majesty's government from "the calumnies and scandalous invectives "cast upon it by ignorance and malice *." Speaking of the tenderness of the law of parliament, with regard to the freedom and indifferency of elections, he says, "as it permits no exemptions or restraints against "the freedom of it, so it forbids solicitations, "bribings, or gratifying of sheriffs, head "officers, or others, by any persons, or "giving money or rewards (*it were well if*

* See his Dedication.

“ it extended to drink and entertainments) to
 “ freeholders or inhabitants, to obtain their
 “ suffrages, or to procure one to be elected ;
 “ and in such cases, proof being made
 “ thereof in the Committee of Privileges,
 “ and by them reported to the House of
 “ Commons, a member obtaining his elec-
 “ tion by such undue and unworthy means
 “ will be thrown out with disgrace, and
 “ the election adjudged void *.”

In another part of the same work, after stating, that persons attainted of treason or felony, or outlawed, are not capable to be members of parliament, he adds, “ in like manner such as are guilty of *bribery and corruption, or other heinous crimes*, are not fit to be chosen to serve in parliament; but “ if they be members of parliament, they “ will be, upon complaint and proof against “ them, removed again, and expelled, by “ judgment of parliament, from that high “ trust, as unfit for it †.” Such was the

* Whitelocke's notes upon the King's Writ, on the words “ freely and indifferently.” Vol. 1, c. 42. p. 387.

† Ibid. on the words “ most fit,” p. 461.

law as to bribery in the reign of *Charles the Ist.* An election obtained by bribery was void, and the party bribing rendered incapable to sit in parliament; and according to *Whitelocke*, it was even then the wish of all good men, that the same punishment might be extended to giving drink and entertainments.

It remains to be seen what has been done in subsequent times. In the year 1669, a bill was brought into the House of Commons, "to prevent abuses and extravagances in electing members to serve in parliament, and for regulating elections *." It failed, like many other good bills, in that reign; but it was not laid aside without having been read a second time, and committed, after a long debate touching the making void of all future elections which should appear to be procured by money, or by entertainments of meat and drink †. I cite this to shew, that many persons then were desirous of accomplishing what the revolution at length

* 9 Journals, 100.

† Ib. 103.

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enabled them to carry into effect. Then comes the case of *Bewdley* in 1676. "Sir Thomas Meres reports, from the Committee of Privileges and Elections, the state of the case, and evidence therein concerning the election for the borough of *Bewdley*, in the county of *Worcester*; and that the chief matter on which the Committee did ground their opinion was the bribery of Mr. *Foley* to procure the voices of electors;" on which they passed two resolutions, which were adopted by the House; the one, declaring that Mr. *Foley* was not duly elected, and the other, seating Mr. *Herbert* *.

In the next year, 1677, the treating resolution passed †, and in the year following it was made a standing order of the House ‡. By that resolution, "if any person to be elected into a place, for to sit and serve in the House of Commons for any county, &c. shall, after the *teste* of the writ, by himself, or by any other on his behalf, or at his charge, at any time be-

* 9 Journ. 397.

† Ib. 412.

‡ Ib. 482.

"fore

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“ fore the day of his election, give any per-
 “ son or persons having voice in any such
 “ elections any meat or drink, &c. or shall
 “ before such election be made and declared,
 “ make any other present, gift, or reward,
 “ or any promise, obligation, or engagement
 “ to do the same, either to any such person or
 “ persons in particular, or to any such coun-
 “ ty, city, town, port, or borough in gene-
 “ ral, or to or for the use and benefit of
 “ them or any of them, every such enter-
 “ tainment, present, gift, reward, promise,
 “ obligation, or engagement, is by this
 “ House *declared to be bribery*, and such
 “ entertainment, &c. being duly proved, is
 “ and shall be a sufficient ground, cause,
 “ and matter to make every such election
 “ void as to the person so offending, and
 “ to render the person so elected incapable
 “ to sit in parliament by such election *.”

In this resolution, the punishment of treat-
 ing is described in nearly the same words as
 that of bribery by *Whitelocke*. It shews
 that, in the opinion of the House, bribery
 and treating were the same offence, and

* See this resolution at length in the first petition,
 ante, p. 3.

having

having once declared them to be so, every disability annexed to the one, immediately attached upon the other. But such was the great anxiety of the House to preserve the purity of election inviolate that not content with having declared treating to be bribery, they added a particular instruction to the Committee of Privileges and Elections, "and hereof the Committee of Elections and Privileges is appointed to take especial notice and care, and to act and determine matters coming before them accordingly." Thus they gave it as an order to all future Committees, to receive evidence of treating, and when proved to their satisfaction, to consider it in the same light as bribery. The House at any time might have so considered it, but the Committee of Privileges was not competent to receive the evidence without such resolution.

In 1680, two years after the passing of this resolution, a bill to prevent the offences of bribery and debauchery in the election of members to serve in the Commons House of Parliament was brought in and read

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read a second time *. This bill also failed. In 1681, the following entry appears on the Journals of the House: "It being represented to this House, that several counties, cities, and boroughs, have freely, without charge, elected many of the members in this present parliament, according to the ancient constitution of elections of members to serve in parliament; wherefore this House doth give their thanks to such counties, cities, and boroughs for the said elections †." Nothing can more strongly mark the feelings of the House. There was nothing immediately before them to call for this resolution; but they felt so strongly the mischief of the debauchery of elections, as to go out of their way, in order to thank those places which, steering clear of corruption, had returned their members freely and without charge, according to the ancient constitution of elections. Such was the honorable and virtuous conduct of the House of Commons, even during the dissipated reign of *Charles the Second*. I hope

* 9 Journ. 659.

† 9 Journ. 708.

I shall never see recorded on the Journals of the House, an insult to the memory of those who passed that resolution, nor witness the indignity of a parliament of *George* the Third supporting or conniving at practices, which a parliament of *Charles* the Second deemed a violation of the law, and contrary to the ancient constitution of elections.

So much for the reign of *Charles* the Second. Little of any consequence occurred in the short reign of his unfortunate successor ; I hasten, therefore, to the glorious period of the revolution. The very year after that propitious æra, a bill was brought in to the House of Commons, “ to prevent “ abuses, occasioned by excessive expences “ at elections of members to serve in parliament *.” This bill was proceeded in no further than the second reading ; but in the very same year the case of *Stockbridge* was determined. This was a complaint of bribery against Mr. *Montague*, and upon the report of the Committee of Privileges and

* 10 Journ. 272.

Elections, the House not only agreed with the resolution of the Committee, that Mr. *Montague* was not duly elected, but further resolved, “ that *William Montague*, esquire, “ be disabled from being elected a burgesse “ to serve in this present parliament for the “ borough of *Stockbridge* ;” and ordered the bailiff and several electors into the custody of the serjeant at arms, for giving and taking bribes ; it was even proposed to disfranchise the borough for ever from sending burgessees to parliament, and instead thereof, that two more knights for the shire should be chosen for the county of *Southampton* *. This clearly marks the determination of the House to check the growing evil ; and that effectually to do so, they felt that something more was necessary, than merely to render the election void.

Thus, immediately after the revolution, when the House was a little purified, it was considered as established law, that where bribery or treating were notorious (and they are so in the case of a special report)

* 10 Journ. 286.

the guilty person could not sit in that parliament, against whose privileges he had so grossly offended. The case of *Stockbridge* was a case of bribery alone. That of *Mitchell*, in 1690, the year following, was a case of bribery and treating; evidence was given of both, but it was proved, that all the money given to the electors was given them expressly for meat, drink, and tobacco; yet without making any distinction between the two offences, the Committee came to a general resolution, that *Anthony Rowe*, esq. and his agents, are guilty of bribery in his endeavouring to be elected a burghers to serve in this present parliament for the borough of *Mitchell*. The House agreed with the Committee in their resolution; and although the numbers on the poll were 31 for Mr. *Rowe*, and there were only 20 for Mr. *Courtney*, they avoided the election of Mr. *Rowe*, and seated Mr. *Courtney* *. So also in the case of *Chippenham*, in 1691, the election of Sir *Basil Firebrass* was avoided for bribery, and Mr.

* 10 Journ. 469.

Talmash was declared to be duly elected, although he had the minority of votes *.

About this time it was usual, when an election had been obtained by corrupt practices, not only to deprive the guilty candidate of his seat, but also to punish the electors, by allowing no writ to issue for a new election, until they had repented of their crimes, and the corrupt influence created had so far died away as to admit of a fair and impartial election.

I now come to the act of the 7th of king *William* the Third, c. 4. which passed in the year 1696. At that time, when the principles of the constitution were perfectly understood, and the spirit of the revolution warmed every bosom, and animated each heart with the love of liberty, what *White-locks* sighed for in the reign of *Charles* the First; what all good men in parliament contended for under *Charles* the Second; what since the revolution had been adopted in the cases I have quoted, was, by this statute, passed into a law, and established as

* 10 Journ. 637.

a material bulwark of the constitution. The title and preamble of the act first require consideration; the title is, "an act for preventing charge and expence in elections of members to serve in parliament;" it does not confine its provisions either to bribery or to any other particular species of expence, but extends them so as to include every expence and charge whatsoever, which can be incurred in an election. The preamble recites, "Whereas grievous complaints are made, and manifestly appear to be true, in the kingdom, of *undue* elections of members to parliament, by excessive and exorbitant expences, *contrary to the laws*, and in violation of the freedom due to the election of representatives for the Commons of England in parliament, to the great scandal of the kingdom, dishonourable, and may be destructive to the constitution of parliaments *." The statute, therefore, was declaratory of the common law. It did not for the first time make expences at elections illegal; before that time they were *undue and contrary to the laws*. The

* See the act at length in the first petition, ante, 4.

object of the act was only to declare what was the law, and to enforce its execution more effectually in future. The resolution of 1677 had previously declared treating to be bribery. This statute likewise in its prohibitory clause couples together the giving of money and entertainments; it alike prohibits and subjects both to the same penalties. Such is the nature of this statute, obtained by the glowing spirit of the revolution. Mr. *Thellusson* claims his seat on the true construction of this act. Few would imagine 'it could be at any time contended, I am sure no Committee ever will determine, that a convicted offender, within the meaning, the letter, and the spirit of so salutary a law, shall be completely white-washed by any construction of the act, however ingenious.

But the construction of the act will avail him little; it has already received a parliamentary construction, and from the very parliament that passed it. In the case of *Aldborough*, in 1796, soon after the passing of the act, and in the same year, a petition of *Arthur Kaye*, esquire, was presented to the House, setting forth, that

Henry Fairfax, in contempt of an act of last session of parliament, publicly spent money in treating the electors for their votes, and thereby procured himself to be returned. The House resolved, *nemine contradicente*, "that *Henry Fairfax*, esq. having, contrary to the *late act* of parliament, "expended money in order to his election "to serve in the present parliament for "the borough of *Aldbrough*, in the county of *York*, since the vacancy thereof by "the death of Sir *Michael Wentworth*, is "disabled and incapacitated *upon such election* "to serve as a burghers for the said borough." And then it was resolved, "that "the election was void *." What was the consequence? Was the House content with avoiding the election? Did they, after this special report, allow him again to become a candidate? No. They felt the borough to be tainted by the corrupt practices of *Fairfax*; and in order to prevent even any friend of his availing himself of the influence he had created, they went the

* 11 Journ. 599, 632.

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length of disfranchising the borough, and allowed no writ to issue for a twelvemonth, nor until they had received a petition from the electors, expressing their sorrow for the offence, and promising never to suffer any irregularities in any future elections for their borough, but strictly and faithfully to observe so good and beneficial a law*. The case of *Ludgershall*, in 1698 †, and that of *Corfe Castle*, in 1699 ‡, are also directly in point; the former was a case of bribery only, the latter, of bribery and treating.

Next comes the case of *Thetford*, which was also in the same year, 1699. On this case I mean principally to rely, and I therefore request your most serious attention. This case is particularly material; the complaint was confined to treating; it was decided within three years after the passing of the treating act, by the very gentlemen who passed it, and on a day expressly set apart to consider the construction of that act. In the beginning of the year 1699,

* 12 Journ. 19. † 12 Journ. 498. ‡ 12 Journ. 636.

a petition was presented to the House, complaining of the undue return of Mr. *Sloane* for the Borough of *Thetford*. After a full hearing of the case, and a debate thereupon, it was resolved by a small majority, 115 to 110, that *James Sloane*, esquire, in treating the corporation of *Thetford*, in the county of *Norfolk*, has been guilty of a breach of the late act of parliament, for preventing expences in elections. The House avoided the election, and ordered a new writ to issue. Another election soon after took place; Mr. *Sloane* and Mr. *Soame* were candidates, and Mr. *Sloane* was a second time returned by a majority of votes. What was the conduct of the House? So far from considering the act as satisfied by the avoidance of the first election, they took up this second election of Mr. *Sloane* as a breach of privilege. They did not wait for a petition against his return, in order to resent the insult. The return was notified to the House on the 19th day of February, and, as if they were determined to leave no doubts to posterity of their meaning, and what they considered to be the true construction

struction of their own act, they immediately came to the following resolution: "Resolved, that this House will on Saturday next, *in a full House*, take into consideration the act for preventing expences "in elections;" and Mr. *Sloane* was ordered to attend in his place upon that day. Two days after this resolution, Mr. *Soame* presented a petition, setting forth, that Mr. *Sloane* had procured himself to be again returned, though the Petitioner was duly elected a burgess upon the said new election, Mr. *Sloane* being incapacitated to sit in this House, as advised. This petition was ordered to lie on the table until Saturday, when the act against expences in elections was to be taken into consideration. On that day the House, according to order, proceeded to take into consideration the act, made in the 7th year of his majesty's reign, for preventing charge in elections of members to serve in parliament; and the petition of *Edmund Soame*, esquire, was then read, and the said act was read, and Mr. *Sloane* attending, according to order, he was heard in his place, and then withdrew;

drew; and a debate arising in the House, upon the construction of the said act, upon Mr. Sloane's being again chosen and returned for the borough of Thetford; and the question being put, that the said Mr. Sloane be capable of serving in this present parliament for the said borough, it was, upon a division, negatived by a majority of thirty-two, the numbers being 144 to 112. And as a proof that this decision did not proceed from party motives, but from a desire to vindicate the honor of the House, and to enforce the true construction of the act, they came to no decision on the merits of Mr. Soame's petition, but in the common course referred it to the Committee of Privileges and Elections, with the usual order to examine it, and report their opinion thereon to the House. Thus they did not interfere in behalf of Mr. Soame, but left him to obtain, according to the established forms, whatever redress he might be entitled to.*

I now have cited one case antecedent, and another immediately subsequent to the pass-

* 13 Journ. 134, 145, 223, 225, 251.

ing of the act; both tend to the same point. There are many others to the same effect. In the case of *Great Grimsby*, in 1700, the House unanimously resolved, that "*William Coatsworth* hath been notoriously guilty of bribery, and other indirect practices, in order to procure himself to be returned a member for this present parliament for the borough of *Great Grimsby*"; and not satisfied with declaring the election void, and forbidding any new writ to be issued during that session, they ordered him, for his offence, to be sent a prisoner to the Tower, and committed his agents, and the mayor of the town, to the custody of the serjeant at arms*. So anxious, in these days were the House to preserve the purity of election, and to enforce the due execution of the treating act. In the last case it is evident, that the not allowing any writ to issue, was meant to mark the heinousness of the offence; it could not have proceeded from any fear that *Mr. Coatsworth* might stand a second time. The

* 13 Journ. 379, 383.

House had sufficiently guarded against this, by sending him a prisoner to the Tower. The case of *St. Albans* also, in 1700, is another case directly in point. In that case, the counsel for the Sitting Member, Mr. *Joshua Lomax*, yielded the majority of votes to be with the Petitioner, but insisted, that by *bribes and treats* he had procured the majority, and was thereby rendered *unqualified to sit in the House*. The House resolved, "That neither the Sitting Member nor the Petitioner were duly elected *.

I now come to the history of three gentlemen of the name of *Shepherd*, and their friend Mr. *Allen*, an East India director. They also, like the Mr. *Thellussons*, were merchants of wealth and eminence in the city, and like them ambitious of the honors of legislation. The *Shepherds* flourished about the year 1700. Regardless of danger or expence, they sallied forth in quest of parliamentary adventures. Their first efforts were successful; but unfortunately they could not maintain the advantages they had gained, and they soon

* 13 Journ. 395, 6.

met with the usual fate of adventurers. They were all three returned; but they were hardly warm in their seats, when petitions were presented against them all for bribery and corrupt practices. The consequence was, that they were all three expelled the House, and one of them was sent a prisoner to the Tower; but they were not discomfited. In the person of their friend, Mr. *Allen*, they still contended for a seat in parliament; he also shared their melancholy fate; he was returned, petitioned against for bribery, expelled the House, and ordered into custody. Thus ended the adventures of those three valorous knights, and of their doughty squire, the East India director*. The determination of the House in the case of the *Shepherds* acquires peculiar force from the circumstances attending it; two of them appeared less guilty than the third, and acknowledging their fault, submitted themselves to the mercy of the House;

* 13 Journ. 334, 404, 407, 408, 409, 413, 414. Samuel Shepherd, senior, was returned for Bramber; Samuel Shepherd, junior, for Wootton Bassett; Francis Shepherd, for Andover; and Edward Allen, for Ilchester.

they

they were only expelled ; but the third, their father, who appeared to be the instigator and prime mover of the whole, was not only expelled the House, but committed to the Tower. The manner in which he was expelled marks the sense of the House ; he was brought from the Tower to the bar by the serjeant with the mace, and, being upon his knees, Mr. Speaker pronounced the sentence of expulsion, and then remanded him to the Tower*.

But the House were not satisfied with punishing the guilty. The more strongly to mark their sense of the necessity of enforcing the provisions of the treating act, they paid a tribute of respect to those who had been most instrumental in pursuing these offenders to conviction. Sir *Edward Seymour*, who was several times Speaker, was at that time Chairman of the Committee of Privileges. He had been a strenuous advocate for the treating act, and finding it had been most grossly violated, he was indefatigable in his exertions to bring the offenders to punishment. The House ap-

* 13 Journ. 491, 497.

proved

proved his conduct, and voted him their thanks. After resolving that he had made good his general charge against the *Shepherds*, of bribery and corruption, in several boroughs that send members to parliament, they unanimously resolved, "That the thanks of the House be given to Sir *Edward Seymour*, Bart. for the great service he had done the public, in detecting the bribery and corruption which hath been practised in the elections of several members to serve in this present parliament." The manner in which the Speaker addressed him in giving him these thanks, is also remarkable. After stating, that the House has had a long examination of several corrupt practices, tending to the destruction of the constitution, and that they are sensible the discovery thereof was owing to his resolution and to his love of the public, and was brought about at his charge and by his conduct; he adds, "It is an honor, Sir, to you, that you are descended from ancestors who have been successful in commanding armies and fleets of this kingdom, and from a protector of this realm;

N

" but,

“but, it is your personal honor that you
 “have protected, even the constitution of
 “this place. As the House has expressed
 “their zeal and indignation against those
 “who have endeavored to undermine and
 “ruin the foundation of our liberties: so
 “they are desirous, at the same time, that
 “your name may stand upon record, as
 “being the means by which it is brought
 “about.” That it was considered in the
 same light by Sir *Edward Seymour*, appears
 from his answer to this address of the
 Speaker.—“The honor I have received
 “this day, is sufficient to gratify the greatest
 “ambition and the greatest endeavors any
 “man is capable of, in order to the public
 “service, which was the only inducement
 “that occasioned me to undertake it. And
 “I am extraordinary happy, that success
 “has crowned my endeavors, so far as to
 “intitle them to your approbation. I must
 “say, that I am indebted to several particu-
 “lar worthy gentlemen, who have given
 “their assistance in this matter; and that
 “the great honor you have been pleased to
 “do me this day, will be so great an orna-
 “ment

* ment to my escutcheon, that it will wait
 "upon me to my grave *."

Thus they rightly thought in those days, that, to destroy corruption and preserve the purity of election, was a higher honor than to have the direction of affairs, and of more essential service to the country than, by a series of brilliant victories, to add fresh provinces to the empire †. In the following year, 1701, *Charles Mason* being found guilty of notorious bribery in procuring himself to be elected a burges for *Bishops Castle*, was expelled the house and ordered to be taken into custody. No new writ was allowed to issue during the whole of that session ‡. In 1701 also, *Nathaniel Gould*, who, by similar practices had procured his return for *New Shoreham*, met with the same fate, and no writ was allowed to issue §. So also in the case of *Newcastle under Line* in 1703. Upon evidence of treating, the election of *John Crewe Offley*

* 13 Journ. 415.

† See note (E) at the end of the volume.

‡ 13 Journ. 537.

§ 13 Journ. 404.

was avoided, and no writ allowed that session*.

These determinations prove, not only that treating was always contrary to the law of parliament, but that it has always been considered by the House of Commons in the same light as bribery, and punished as such. *Blackstone*, in his Commentaries, classes them together, and lays it down as law, that they both incapacitate to serve in parliament. After enumerating the different statutes for securing the freedom of election, he says, "Thus are the electors of
" one branch of the legislature secured from
" any undue influence from either of the
" other two, and from all external violence
" and compulsion. But, the greatest danger
" is that in which themselves co-operate,
" by the infamous practice of *bribery* and
" *corruption*. To prevent which it is enact-
" ed, That no candidate shall, after the date
" (usually called the *teste*) of the writ, or
" after the vacancy, give any money or
" entertainment to his electors, or promise

* 14 Journ. 315.

“to give any, either to particular persons
 “or to the place in general, in order to his
 “being elected, on pain of being incapable
 “to serve for that place in parliament*.”

But I understand it is to be contended, that this proves too much, and therefore that it is no authority. But admitting, for the sake of argument, that this expression goes too far; yet, by rectifying what may have been an omission of the transcriber, or an error of the press, every difficulty will be removed, and the sense compleat. Insert but the word “*the*” immediately before parliament, and it will stand thus, “On pain of being incapable to serve for that place in “*the*” “parliament;” which is sound law, and perfectly agrees with all the decisions I have quoted. But the passage, as it stands originally, makes strongly in my favor; it shews that *Blackstone* considered the practice either of bribery or treating to be infamous; that they were the same offence in law; and that a total incapacity to sit in parliament was, in his opi-

* 1 Black. 179.

nion, a punishment no more than commensurate with the offence of treating, *Blackstone* was not backward in pointing out the defects of our criminal jurisprudence, or the too great severity of its punishments.

Such then is the spirit of this wholesome statute; "to compleat the efficacy of which, "there is nothing wanting but resolution "and integrity to put it in strict execution *." I have experienced the integrity of one Committee, and have no doubt, but that, to similar integrity, you join the resolution required. In order to prevent effectually all corruption at elections, *Blackstone* wished to enforce, not to alter the existing laws. These he deemed sufficient. But, what benefit could be possibly derived from the strictest execution of laws, which should allow the guilty party to be immediately re-elected by means of that very corrupt influence, for creating which his former election was avoided? *Blackstone* was not so shallow an observer as to imagine that

* 1 *Blackstone's Com.* 180.

any advantage could accrue from the execution of such a law.

The general opinion of lawyers also has favoured this construction. *Blackstone* published his Commentaries in 1765, five years before the passing of Mr. *Grenville's* act. The *Worcester* case, in 1774, was a few years after it had passed*. In that case, after an accidental vacancy, Sir *Watkin Lewes* and some electors in his interest, petitioned against Mr. *Rous*, for bribing and corrupting, by money and otherwise, several freemen of that city.

Upon the trial of these petitions the Committee determined the election to be void, and neither candidate to have been duly elected. A new writ was ordered, and Mr. *Rous*, being advised by his counsel that, in consequence of this determination, he could not maintain his seat if he should be re-elected, declined standing a second time†. In the *Ipswich* case, in 1784, the circumstances were similar.—Mr. *Cator* was petitioned against for bribery and treating‡.

* It passed in 1770.
442. 3 *Luders*, 484.

† 34 *Journ.* 400. 425.
‡ 1 *Luders*, 21.

The Committee made no special report, but determined "that neither the sitting member nor the petitioner were duly elected; and that the last election was void as to Mr. *Cator* *". In consequence of these resolutions the House ordered a new writ. Conceiving himself disqualified by the determination of the Committee †, Mr. *Cator* did not offer himself as a candidate at the ensuing election, although he had spent nearly as much money in the contest, and had created an influence in *Ipswich* as powerful as that of Mr. *Thellusson*, in *Southwark*.

In the case of *Hindon*, in 1777; the election of General *Smith* and Mr. *Brand Hollis* was declared void for bribery. Mr. *Smith* was returned a second time; but upon a petition to the House, founded on his incapacity to sit, his second election was avoided ‡. Nor was this all. The House were on the point of disfranchising the borough, and a bill was brought in for that purpose. The attorney general was ordered to prosecute both him and Mr. *Hollis*. An

* 1 Luders 62.

† Ib. 69.

‡ 36 Journ. 10. 27. 77. 94.

information was accordingly filed against them, and they were both convicted. When they came up for judgment, Mr. Serjeant *Davy* informed the court that his client, Mr. *Smith*, had a few days before been re-elected for *Hindon* by a great majority of voices, and since there was not the least shadow or pretence for any charge of bribery at that election, he hoped *that* would operate with the court in mitigation of the punishment they might think fit to inflict upon him*. But Lord *Mansfield* interrupted the learned Serjeant in these words: "And do you think, brother *Davy*, that it mends your client's case, that he had the impudence to return a second time to the scene of his offences, and has reaped the fruit of his former corruption?" The judgment passed upon him is also remarkable. After adjudging him and Mr. *Hollis* to pay each a fine of 1000 marks, and to be imprisoned six months, Mr. Justice *Aston*, who delivered the judgment of the court continued, "As to you *Richard Smith*, the

* 4 Doug. 287.

“ court cannot help expressing their astonish-
 “ ment at what appeared from the mouth
 “ of your own counsel, that you continued
 “ so boldly to persist in your attempt, and
 “ that you have been again returned for the
 “ same place—they, therefore, have thought
 “ proper to add to *your* punishment, that at
 “ the expiration of the term of your im-
 “ prisonment, you shall give security for
 “ your good behaviour for three years,
 “ yourself and two sureties, you to be bound
 “ in 1000*l.* and each of the sureties in
 “ 500*l.* *”

Thus it was that Lord *Mansfield* and the
 court of King's Bench considered the eligi-
 bility of a candidate, whose election had
 been avoided for bribery. In the *Honiton*
 case, in 1780, which I have already quoted,
 Mr. *M'Leod* was declared ineligible, al-
 though there was no special resolution
 against him; and the second Committee
 perceiving that his first election had been
 avoided for bribery, would not even allow
 him to go into his case †. In the case of

* 4 Douglas, 292.

† Ante, 152.

Kirkudbright, in 1781, upon the hearing of the petition against Mr. *Gordon*, who had been returned for that stewartry, the Committee determined, that he had been guilty of bribery at the last election for *Kirkudbright*, and that the election was void. Another election took place, and Mr. *Gordon* was again elected by a majority of votes. Mr. *Johnstone* petitioned against him on the ground of this incapacity; and on the trial of his petition the Committee avoided the election of Mr. *Gordon*, and seated Mr. *Johnstone* *.

In the year 1784, the present Earl *Stanhope* proposed a bill, the principal object of which was to prevent bribery at elections by giving entertainments to the electors or paying them for loss of time or their travelling expences. By the second clause, persons guilty of any of these practices were rendered incapable to serve for *that parliament*. The bill passed the House of Commons. In the House of Lords it was strenuously opposed by Lord *Mansfield*—He

* 1 *Luders*, 72. See also note (F) at the end of the Volume;

scouted the idea of the necessity of such a law. He said, the framers of the bill must have been ignorant of the law as it now stands, or they never could have thought of such a bill; that the crime of bribery was already clearly and sufficiently ascertained by the law; for which reason, every bill prescribing new modes of prevention, tended rather to weaken and contract the law than to enforce and enlarge it; that the laws in being were fully adequate to the punishment of all colorable and evasive means of corruption under pretence of paying electors for loss of time, &c. *. The doctrine of Lord *Mansfield* was, "Shew me the offence, and I will find the law to punish it." At the instigation of his Lordship the bill was rejected by the Lords.

Such was, in 1784, the language of the same Lord *Mansfield*, who, but seven years before, in the case of *Mr. Smith*, in 1777, had acted with such becoming severity. Can it be supposed that in so short a space

* 1 *Luders*, 68.

of time he had altered his opinion as to the danger and heinousness of the crimes of bribery and treating; or, that by opposing this bill, that great judge wished either to connive at or encourage the corruptions which prevailed at elections?—No; exactly the reverse. He knew that the act of King *William*, if properly carried into execution, was of itself sufficient for every purpose proposed by the bill; and he therefore wisely opposed the introduction of any additional statute on the subject, perceiving, in his comprehensive mind, that by multiplying statutes, the execution of them all might be rendered precarious, but that no real strength could be added to the laws already in existence.

Carew also considered bribery and treating to be the same offence, and viewed their enormity in the same light as the other authorities which I have quoted. After stating that the publishing the proceedings of the House in matters of election may be one step towards having a legal representative of the Commons in parliament, which will add dignity and weight to its proceedings;

*

ings;

ings; he adds, "There is also another benefit which may arise from these collections, and which every HONEST, SERIOUS, and CHRISTIAN BRITON must heartily wish for. The Public will see how odious and loathsome BRIBERY and CORRUPTION were in the eyes of our Forefathers. They will see the just indignation shewn, in many cases, by the House of Commons, upon complaints of this sort. They will see the construction which that House formerly put upon the laws against TREATING, and how difficult it was to evade the MEANING of laws to prevent crimes of this kind. This may, perhaps, terrify candidates, agents, and electors, from engaging in these indirect practices; which if not put a stop to, neither the integrity of parliament, nor the greatest solemnity they may be attended with, will be looked upon as a benefit to the nation, and must therefore become a general scandal *."—Such is the wise observation of *Carew*. You will shew, I have no doubt, that bribery and corruption are as odious and loathsome

* *Carew's Rights of Election*, Preface, 10.

in your eyes as they were in those of your ancestors ; like them, you will shew a just indignation at the practices of which I complain, and by putting, on the laws against treating, the same construction as was adopted by your Forefathers, you will take care that, through your means, it shall not now be rendered less difficult to evade the meaning of the laws passed for the prevention of these crimes. It remains for me to remind you, in this place, of the standing order of the House, first made in 1701, against bribery and corrupt practices ; *viz.* “ That “ if it shall appear, that any person hath “ procured himself to be elected or returned a member of this House, or *endeavored so to be*, by bribery or any other corrupt practices, this House will proceed with “ the utmost severity against such person *.”

I have now laid before you a current of authorities in support of the broad construction for which I contend ; I have supported it by the decisions of the House ; the resolutions of Committees ; the notes of

* 13 Journ. 410.

Whitelocke; the commentary of *Blackstone*; the judgment of the court of King's Bench; the opinion of Lord *Mansfield*; and the observations of *Carew*. And so anxious is the House to preserve the purity of election inviolate, that, not content with having made the resolution against bribery a standing order, they renew it at the commencement of each session, and annually declare, that they will proceed with the utmost severity against any person who shall procure, or even endeavor to procure his election by *bribery or other corrupt practices*.

After these authorities, you probably must wonder, what possible defence can be set up, and how Mr. *Tbellusson* could have been so ill-advised as to become a candidate a second time.

I understand a distinction is to be attempted between bribery and treating; that it is to be contended that these offences are distinct, because the act of king *William* is called "the treating act," and that of *George the Second*, "the act against bribery." This distinction, I am told, is to be supported on the authority of the second

Norwich

Norwich case; but to call the statute of king *William*, "the treating act," as distinguished from bribery, is a perversion of terms; its title is, "an act for preventing charge and expence in elections of members to serve in parliament;" thereby comprehending every expence and charge, of whatsoever kind, by which an election may be gained. Throughout the act, the giving money and the giving entertainments are regularly classed together; nor does it any where make the least distinction between them, either in the prohibition or the punishment. The 2 *Geo.* 2. c. 24. although it is entitled, "an act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament," confers no jurisdiction whatever on the House; it gives a penalty of £. 500 to any person who shall sue for the same, and inflicts certain penalties and disabilities on those, who, by due course of law, shall be convicted of bribery. The act of king *William* is the only act against bribery, of which the House of Commons can have cognizance. Seat Mr. *Thelthiffon*

upon this distinction, and you will not only destroy the spirit of this wholesome act, and make a mere mockery of its provisions, but you will annihilate all power in the House over its own members derived to it from statute, and will confine its operations for the future to the enforcing of its own resolutions.

I said, that I understood this distinction was to be supported on the authority of the second *Norwich* case. My petition has been the subject of much conversation, and has been much canvassed in *Westminster Hall*. Of late, if I have met a lawyer, and asked him what he thought of it, the answer has always been, "but the second *Norwich* case," unless he chanced to be a special pleader, and then my mouth has been shut with the words, "such election." Armed with the terrors of the second *Norwich* case, and the magic of "such election," the learned gentlemen are confident of success, and look with contempt on my humble endeavors. What is then this famous *Norwich* case, which is to destroy the wholesome provisions of our ancestors? Upon examining

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examining the Journals, I find, that in 1786 there was a vacancy for the city of *Norwich*, occasioned by Sir *Harbord Harbord* being made a peer. The honorable *Henry Hobart* and Sir *Thomas Beevor* were candidates to fill that vacancy; Mr. *Hobart* was returned; Sir *Thomas Beevor* petitioned against him, and amongst a variety of other matters, bribery and treating were charged. On the trial of that petition, the Committee determined, that neither Mr. *Hobart* nor Sir *Thomas Beevor* were duly elected; and that the last election was a void election. This is the whole that appears upon the Journals relative to the first *Norwich* case *. But there is a second *Norwich* case. Again referring to the Journals, I find, that a new writ having issued to supply the vacancy, the same parties were candidates, and Mr. *Hobart* was again returned. On the 5th of April, 1787, certain electors, in the interest of Sir *Thomas Beevor*, petitioned against this return of Mr. *Hobart*, on the ground that, having violat-

* 42 Journ. 276. 525, 6.

ed the acts of parliament against bribery and entertaining electors, he was rendered incapable to represent the city of *Norwich* in parliament at any election to fill the said vacancy, and therefore, that he was not eligible*. This petition came on to be heard soon after, and on the 8th of May Mr. *Phelps*, the chairman, reported to the House, that Mr. *Hobart* was duly elected†. This is the whole that appears upon the Journals.

I then referred to the report of Mr. *Luders*; there I found, that the first petition of Sir *Thomas Beevor* contained a variety of allegations; it charged that the Sitting Member had been guilty of many notorious acts of bribery; that in the same manner, he had offended against the treating act; that he had prevented the freedom of election, and disturbed the peace of the city by riots and tumults; that he had confined several electors to prevent their voting against him; it accused the sheriffs of partiality; and finally, it claimed for the

* 24 Journ. 631, 2. † Ib. 736.

Petitioner the majority of legal votes*. As no special report was made, it became impossible to decide on which of these allegations the Committee had determined, or whether their judgment might not in some measure have been influenced by them all. The second Committee, therefore, were at sea, and completely at a loss how to guide themselves. Thus circumstanced, they were easily persuaded to refer to the minutes of the evidence taken before the former Committee, in order to discover on what grounds that Committee had decided. This was, in fact, to try the former Committee. Nothing could be more absurd than such conduct, especially as there was evidence on different charges. What light could the minutes cast upon the motives which actuated the Committee in making their decision? Could the clerk infuse into the page the blush of a perjured, or transcribe the hesitation of an unwilling witness; yet these circumstances were as necessary to enable them to form their judgment as the

* 3 Luters, 455.

evidence itself.—Listen to *Blackstone*.—Speaking of the examination of witnesses, *viva voce*, he says, “by this method of examination, and this only, the persons who are to decide upon the evidence have an opportunity of observing the quality, age, education, understanding, behavior, and inclinations of the witnesses; in which points all persons must appear alike when their depositions are reduced to writing, and read to the judge, in the absence of those who made them; and yet as much may be frequently collected from the manner in which the evidence is delivered, as from the matter of it. These are a few of the advantages attending this the English way of giving testimony, *ore tenus**. By forming their judgment from the minutes, the second *Norwich* Committee were debarred all these advantages which the former Committee had possessed. The *Honiton* Committee had also determined from the minutes, but the ground of their proceeding was far different; they did not

*3 Black. 373.

determine from written evidence ; but perceiving that the petition against Mr. *M^r Leod* contained no other allegation than a charge of bribery and corrupt practices, they rightly concluded, that as the former Committee could not travel out of the record, they must have avoided his election for bribery and corrupt practices alone, these alone being charged *. Thus it appears that Mr. *Hobart* was twice elected for *Norwich*, and was twice petitioned against ; that his first election was avoided and his second confirmed. This is the whole upon the subject which is to be found, either in the Journals of the House, or on the minutes of the two Committees ; it is, therefore, the whole that you have any right to know. You are sworn to decide according to evidence ; and what is not legal evidence, you have no right to take into your consideration, nor can you allow it for a moment to fasten on your minds. What can there be then in this second *Norwich* case, on which the learned gentlemen profess to build so much ? I wish to deal

* 3 *Luders*, 165.

fairly, and, therefore, will conceal from you nothing that I know upon the subject. Mr. *Luders* has reported these two cases. In his report of the second case, after stating what appears upon the minutes, he concludes with a most whimsical tail-piece, in the form of two resolutions, which, he admits, the Committee did not order to be entered upon the minutes, and are not to be found there *. What a pity that so valuable and accurate a reporter, finding them no where in the minutes, should not have taken special care that the public should no where find them in his book!—The first of these two curious resolutions is, “That it does not appear to the Committee from the minutes, that the last Committee adjudged the seat void, on the effect of any other evidence than that of treating *.” If this singular resolution was unanimous, no wonder that they could not be prevailed upon either to announce it to the parties, insert it in the minutes, or report it to the House. It is impossible for any man, who reads the minutes

* 3 *Luders*, 499.

of the *first Norwich* Committee, to say, that the evidence of several of the electors having been confined to prevent their voting had no effect in determining their judgment.

The second resolution denies, "that the disqualification, by the statute 7 & 8 *William* 3. c. 4. so far as the same relates to treating, is prospective to a future election *." This resolution is still more extraordinary than the other; its best answer is its absurdity. By this I mean no disrespect to that Committee; but these resolutions will be quoted as precedents; and, therefore, with all due deference to the gentlemen who composed it, I am bound to prove them absurd. "Precedents are to be followed unless flatly absurd or unjust †." First then, this last resolution directly contradicts the cases of *Ipswich* and *Kirkdubright*. In the former case, Mr. *Cator* did not stand a second time, it being clearly understood that, his election having been avoided for bribery and treating, he was thereby disqualified ‡; in the latter, Mr. *Gordon*,

* 3 *Luders*, 500.

† 1 *Blackstone*, com. 70.

‡ 1 *Luders*, 69.

whose

whose election had been avoided for a similar offence, did stand a second time, and was returned. His opponent, Mr. *Johnstone*, petitioned, and the Committee seated him, although with the minority of votes *. To support this second resolution of the *Norwich* Committee, a distinction must be shewn to exist between the act of king *William* and the treating resolution, on which that act is founded, both as to the offences they prohibit and the punishments they inflict ; but there exists no such distinction. By the treating resolution †, “the giving to persons having voice in an election, any meat or drink above the value of ten pounds in the whole,” is declared to be “bribery;” and the Committee of Elections are instructed to determine accordingly. The act of king *William* goes still further, and classes together in the same sentence, the giving money and the giving entertainments ; it enacts, “that no person shall give to any person having voice in an election, any money, meat, drink,

* *Luders*, 72.

† *Ante*, p. 3. 158.

“entertain-

“entertainment, or provision, &c *.” And by “the second clause, every person *so giving*, “presenting, &c,” (referring to the former clause, in which the giving money, and the giving meat and drink, are alike prohibited without distinction) is enacted and declared “disabled and incapacitated, &c.” By the resolution of the House, “treating” is declared to be “bribery;” by the act of king *William*, no distinction is made between the giving money and the giving entertainments. The first or prohibitory clause classes together and prohibits both alike; the second, or disqualifying clause, refers to the first, and inflicts the same penalties and disabilities on each; there exists, therefore, by the law of parliament, no distinction whatever between bribery and treating, nor between the treating resolution and the statute of king *William*. The beauty and efficacy of that statute is, that it blends in one common prohibition, and in one common punishment, the similar offences of bribery by money, and bribery by treating.

*-Ante, p. 4.

What

What can be more absurd than to say, "a man, in order to be elected, may treat to any amount with impunity; but, if he gives away, in money, one single sixpence to procure a vote, he is guilty of a heinous offence, and liable to the severest incapacities and penalties."

But, after all, what is this second resolution? It denies "that the disqualification of the statute of king *William*, so far as the same relates to treating, is prospective to a *future* election."—Granted.—But what is a *future* election? Does it mean the election to fill the vacancy occasioned by the treating, or does it only mean, that it is not prospective to any election which may take place at any other time, after that particular vacancy has been filled? On this point the resolution is perfectly silent; it gives no explanation whatever, and leaves us as much in the dark as before, as to the construction of the statute, or what is to be deemed under it a *future* election.

But we have no legal evidence, that these resolutions were ever passed by the Committee. Mr. *Phelps*, the Chairman, on

whose authority alone the reporter has published them, is dead; and it no where appears, whether he took them down in writing at the time, or whether it was only from memory, that he communicated them to Mr. *Luders*. But be that as it may, if the Committee ever did pass them, they did what was unlawful; they exceeded the limits prescribed to them; sworn to decide according to the law, they mutilated the law: they probably knew that they had done so; they were ashamed of their conduct, and felt it would not bear the light, else they would at the time, as they were bound to do, have communicated these resolutions to the parties, all of whom they so immediately concerned; they would have ordered them, in the usual course of proceeding, to be entered upon the minutes, or have left some trace of them in the office; but there is nothing of the sort. I lament that this *ignis fatuus* should have been held forth to mislead and to misguide the public. As they now stand, these resolutions are the greatest absurdity ever published, from the Bible down to the report of Mr. *Luders*.

I have

I have now sufficiently exposed the absurdity of these two famous resolutions, and proved, that were they even upon record, they could not be relied upon as precedents; their authority must either be given up, or the act of king *William* erased from the statute book.

Having thus disposed of the second *Norwich* case, I now proceed to examine the construction of the act of king *William*, which, I understand, is to be the main defence of Mr. *Tbelluffon*. I am told, that it is to be contended, that this is the true construction, viz. that under that statute, treating is a sufficient ground to avoid an election; but that the punishment ends there, and that the party, whose election is avoided, is eligible to fill the vacancy which such avoidance has created; therefore, that Mr. *Tbelluffon* is eligible to sit in parliament upon this election. This construction of the act is a new light which has lately burst upon us; it was never seen by our ancestors, nor was it ever heard of till the second *Norwich* case in 1787, nearly one hundred years after the passing of the act.

In

In examining the construction of the statute, I need not repeat to you the preamble, or remind you of its emphatic language. The act consists of two sections ; the first is prohibitory of the offences it enumerates ; the second, declaratory of their punishment. It can hardly be contended, that the breach of a statutory prohibition constitutes no offence, or that where an offence is positively marked by statute, those who commit it are not liable to punishment ; still less, that they may be advantaged by the breach of it. But to support this new construction, the learned gentlemen must go this length, and contend, that Mr. *Tbelluffon* may derive a benefit from his infraction of the law. If such be its true construction, the act is a *brutum fulmen*, calculated to intimidate the cautious, but conferring benefits on those who are bold enough to violate its enactments.

The professed object of the act is to prevent expence at elections, and to avoid returns procured by such means ; but by this construction, instead of preventing, it would multiply expence ; it would punish a candidate,

candidate, who should give small sums of money to the electors, but would sanction and encourage him, who should squander thousands in treating them. Can it be supposed, that the last election of Mr. *Tbellusson* was not chiefly owing to the money expended by him at the former; that, notwithstanding the enormous profusion at that election, all remembrance of it died away with the summer months, and with its remembrance, the whole of the influence it had created? No. On his return to *Southwark* he was welcomed by a thousand hungry mouths, thankful for former favors, and lamenting that his hospitalities had been checked by a man so turbulent as myself.

The prohibiting clause forbids “the presenting or allowing to any person, having voice or vote in an election, any money, meat, drink, entertainment, or provision, or the making any present, gift, reward, or entertainment; or any promise, agreement, obligation, or engagement, to give or allow any money, meat, drink, provision, present, reward, or entertainment, in order to be elected, or for being elected.”

This

This is the thing prohibited; the creating any interest either by the means of pecuniary engagements or by opening houses.

The next section is disabling; it directly refers to the former, and is immediately connected with it; they both must stand or fall together. "Every person and persons for giving, &c. shall be disabled and incapacitated upon such election, to serve in parliament for such county, &c. and such person or persons shall be deemed and taken no members in parliament, and shall not act, sit, or have any vote or place in parliament, but shall be, to all intents, constructions, and purposes, as if they had been never returned or elected members for the parliament." There are two constructions of this clause; first, that of Mr. Justice *Blackstone*, viz.—That a person convicted of treating is disqualified from sitting in that parliament. The second narrowing the ground, That he is incapable to fill the particular vacancy occasioned by his treating. There is, indeed, a third; namely, the mushroom construction of the *Norwich* Committee, which sprang up in

1787, and which hardly deserves to be seriously noticed.

That the disqualification created by the act of King *William* cannot refer merely to the particular election procured by treating, appears from this: The writ to the sheriff, on the general election, commands that two burgesſes of the moſt fit and diſcreet, &c. he cauſe to be elected, &c. with ſufficient power to do and conſent to ſuch things, as by the common council of the kingdom then and there ſhall happen to be ordained *. Therefore until ſuch fit perſon, with ſuch ſufficient power, ſhall have been elected and returned, the command of the writ is not obeyed, nor its exigency answered. The avoiding an election is an authoritative declaration of the Houſe, that the perſon returned was not ſuch fit perſon as the writ required, and that the writ ſtill remains unfatiſfied in that particular.—Therefore every new writ to ſupply the vacancy occaſioned by that avoidance, or in other words, to remedy the defect of the firſt return, is in the nature of

* See note (G) at the end of the volume.

an *alias* or a *pluries* to enforce the due execution of the first writ, and to compel a sufficient and valid return to it, according to its terms and meaning.

Such was the writ for the last *Southwark* election. After reciting that, "Where-
 " as *George Woodford Thelluffon*, esquire,
 " was lately chosen one of the burgesſes,
 " &c.; and that the lower Houſe had ad-
 " judged his election to be void, &c.—By
 " means whereof our ſubjects of the ſaid
 " borough are deprived of one burgeſs to
 " treat for the benefit of the ſame borough
 " in our ſaid parliament, &c." It com-
 " mands, "That in the place of the ſaid
 " *George Woodford Thelluffon*, one other fit
 " and diſcreet burgeſs, freely and indiffer-
 " ently, he (the returning officer) cauſe to
 " be elected." Thus this ſecond writ di-
 " rectly refers to the former, which com-
 " manded the ſheriff, "two burgeſſes, of
 " the moſt ſufficient and diſcreet, freely and
 " indifferently to cauſe to be elected; ſo
 " that through an improvident election the
 " affairs of the kingdom might in no wiſe
 " remain unfinished." An election is im-

provident when it will not bear the test and scrutiny of the House of Commons. Till such a return be made, all intermediate elections are mere nullities, and the writs for them are no more than process to compel a sufficient and valid return to the first writ for calling the parliament.

As to the construction of *Blackstone*, it is not necessary for me to go that length. When once the election ordered by the original writ of summons has taken place, and the exigency of that writ is answered by a valid return, the incapacity, perhaps, may cease, and the guilty candidate be allowed to serve for that place upon any future vacancy. For example—Supposing Mr. *Thornton* to have died, and a writ to have issued to supply the vacancy occasioned by his death, Mr. *Tbelluffon* might, perhaps, have been eligible to supply that vacancy, because his treating would have been prior to the issuing of, and was not given with a view to be elected under that writ.

As to the words "*such election*," it is material to observe, that in the eye of the House, whenever a writ issues, either
for

for a general election or to supply an occasional vacancy, every election under it, is considered as one election, and that "*such election*," means, such election as shall satisfy the writ issued to call the parliament, or to fill that vacancy. The *Aldborough* case is decisive on this head. The writ issued to supply the vacancy occasioned by the death of Sir *Michael Wentworth, Fairfax*, as I before stated, was returned. His election was avoided for treating, and the borough was disfranchised for a twelvemonth. At the end of a year a new writ issued. But in ordering the writ, no notice whatever was taken of *Fairfax*, whose election had been avoided, and the writ was made out for the electing a burghers in the room of Sir *Michael Wentworth*, knight, deceased; thereby referring to the original cause of the vacancy, and taking no notice whatever of the intermediate election of *Fairfax*, which having been avoided for treating, was considered as a nullity, and as if it had never taken place*.

* 12 Journ. 19.

Search the journals and there are various instances of this nature. As in the case of *Aldborough*, nothing is said of *Fairfax*, but reference is made to the cause of the original vacancy, so in that of *Hindon*, no mention is made of Mr. *Smith*, but the writ refers to the general election*. The *Bristol* case, in 1680 †; the *Chippenham*, in 1691 ‡; the *Clitheroe*, in 1693 §; the *Portsmouth*, in 1695 ||; and many others, are directly in point; in none of them does the writ take notice of the person whose election was avoided. In all of them it refers to the general election, or to the original cause of the vacancy¶. Thus in the best times of this country, and immediately after the passing of the act, the House of Commons considered as a nullity every return procured by the means of bribery or treating.

I have now proved the propriety of the construction for which I contend; namely,

* 4 Doug. 283: † 9 Journ. 684. ‡ 10 Journ. 569.
§ 11 Journ. 2, 31, 78: || 11 Journ. 412:

¶ All these writs may be seen in the Crown Office, in Chancery, and have been examined.

“ That

"That when a candidate has been convicted of treating, he is incapable to fill the vacancy, to supply which the first writ issued." For my purpose it is not necessary to go further. The *Tbetford* case is directly in point; it is a precedent too strong to be got over. Compare it with this case, and there is not the slightest difference between them, except that in that case the party was disqualified by a resolution of the House; in this, by a special report of a select Committee. In the *Tbetford* case, you have seen that, incensed at Mr. *Sloane's* daring violation of the act, which had so recently passed, the House immediately upon his return being notified, took it up as a matter of privilege, and after a debate on the construction of the statute, on a day fixed for that purpose, expelled him as being ineligible.

Resolutions entered into in this most solemn manner, will necessarily have great weight. They were not the effect of a factious or a party spirit; but the result of mature deliberation and discussion. They were the act of the very house which passed this sta-

tute, supporting its own laws, vindicating its own privileges, and standing forth as a barrier between the freedom of election and the impudence of Mr. *Sloane*. This construction of the act was followed for the space of ninety years, and was never doubted or called in question from that time till the year 1787. Nor can an instance of a different construction be produced, with the single exception of the stray extrajudicial resolutions of the second *Norwich* Committee. But the opinion of Mr. *Douglas*, I am told, is also to be quoted against me : And from the confidence with which it is referred to, one might be led to imagine that he had given a decided opinion.—No such thing.—Although his work professes to be no more than a report of cases determined before select Committees, yet it is a most valuable performance ; and, with the notes, forms a complete body of election law. In his notes to the *St. Ives* case, he abstractly states the different opinions which have prevailed on the construction of this statute. He says, “ The most obvious
“ meaning of the words is, that the person
“ who

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“ who in order to be elected has been guilty
 “ of any of the different species of bribery
 “ there described, shall be incapable of sit-
 “ ting by a return made of him to the par-
 “ ticular writ, after the *teste* of which, or
 “ after the vacancy which gave occasion to
 “ it, his offence was committed. By this
 “ construction, if upon such person being
 “ returned, and in consequence of the proof
 “ of the offence, his election being declared
 “ void, a new writ should issue, and he
 “ should stand again, and be chosen and re-
 “ turned without renewing the offence after
 “ the *teste* of such new writ, he would be
 “ entitled to sit on this new election *.”
 The object of Mr. Douglas was, clearly to
 point out the law; having given one side
 of the question, he goes on,—“ The sta-
 “ tute however has been understood other-
 “ wise; and the words “ *such election*,” are
 “ explained to mean, any election made to
 “ fill the particular seat, for which the first
 “ writ issued; which although a new writ
 “ issues, the second election is to do, for it

* 2 Doug. 411.

“ cannot

"cannot be said to have been supplied by
 "the first, nobody having been thereby en-
 "titled to take possession of it*." The
 only inference then to be drawn from this
 is, that though in the opinion of some, the
 obvious meaning of the words is, that such
 person would be entitled to sit upon such
 new election, yet, in his researches, Mr.
Douglas finds, that the prevailing sentiment
 and the practice have been otherwise. He
 gives no opinion of his own; but, through-
 out the whole of his valuable work, he ar-
 gues the points that arise; wherever the
 law is open and undecided, he regularly
 states his opinion. The inference there-
 fore is fair, that where (as in this case)
 he gives no opinion whatever, it is because
 he found the law clear, and settled beyond
 dispute. It is, however, sufficient for me,
 that he admits that in practice the statute
 has been construed in the manner I con-
 tend.

Mr. *Thellusson*, therefore, is at any rate
 ineligible. The event must be the same,

* 2 Doug. 411.

whether

whether you adopt the broad construction of *Blackstone*, supported by the *Thetford* case, or ground your decision on his incapacity to fill the particular seat for which the first writ issued, and after the *teste* of which writ his offence was committed. But it is said, that the *Thetford* case is absurd, and of no authority, on account of the severity of its punishment; as if it were such a dreadful thing to incapacitate for the remainder of the parliament, a person who has endeavored to obtain a seat in it by bribery and corruption. But the idea of the severity of the punishment arises from mistake. When the act of *William* passed, parliaments were triennial, so that the whole punishment which it inflicted, for an offence so heinous, was to doom the person who committed it to a three years repentance. The septennial act, which extended the duration of parliaments from three to seven years, made no alteration in the statute of King *William*. There would have been no great harm had it increased the punishment, and extended it to a disqualification for life. But without contending to
the

the full extent of *Blackstone* and the *Thetford* case, I quote them in as much as they support my construction of the act. The cases of *Kirkudbright** and *Honiton*†, however, are sufficient for my purpose. According to them, a candidate who has procured his election by bribery or corruption, is ineligible to fill the vacancy which his corruption has occasioned. Or, in the words of Mr. *Douglas*, to fill the particular seat for which the first writ issued.

Having thus proved the ineligibility of Mr. *Thellusson*, it only remains for me to shew, that in consequence of my having given due notice to the electors, I am entitled to be the sitting member. On this head I shall not offer any thing of my own, but shall content myself with reading a quotation from the very valuable work of the learned Serjeant, who is opposed to me.

“ Votes tendered for a person who is disqualified to sit in parliament, are thrown away and lost; but as the sheriff is not a judge of the ability or disability of the

* Ante, 146.

† Ante, 152.

“ candi-

"candidate, he is bound to receive them
 "on the poll, and make his return in favor
 "of him who has the majority. It must be
 "remembered, however, that in case a can-
 "didate laboring under disabilities should
 "be returned, the election will be avoided
 "on petition; and that if before the elec-
 "tion comes on, or a majority has polled,
 "notice is publicly given of his disability,
 "the unsuccessful candidate next to him on
 "the poll, must ultimately be the sitting
 "member *." It would be presumptuous
 in me to add any thing in support of this
 authority. I shall prove that I gave due
 notice; and must request your decision, in
 the first place, on the question of eligi-
 bility †.

EVIDENCE.

THE resolutions of the former Committee
 reported to the House, were then read ‡.

* Heywood on County Elections, 358.

† See note (H) at the end of the volume.

‡ See Ante, 78.

The

The identity of Mr. *Tbelluffon* was admitted.

John Townshend, deputy bailiff for *Southwark*, proved, That a poll being demanded for Mr. *Tbelluffon*, Mr. *Tierney* addressed Sir *Watkin Lewes*, the returning officer, previous to the taking of the poll. He addressed him on the hustings as returning officer, and informed him that Mr. *Tbelluffon* was incapacitated from being a candidate at that election, and desired him to take notice of it. This was spoken in a loud voice, so that every person present could hear it.—After this, Sir *Watkin Lewes* addressed himself to the persons present, and took notice of what Mr. *Tierney* had said, but added, that he did not think himself authorised to determine that question; it was in general terms that he noticed what Mr. *Tierney* had said, and his address was to the electors who were standing in the front of the hustings. The witnesses saw several hand-bills in large capitals, but did not take notice whether any of them contained the special report of the last Committee.—He had never heard the whole of that report till it was read in this
Com-

Committee. The subject of incapacitation was much canvassed by all the electors. The witness had an imperfect recollection of its having been said by somebody on the hustings, That Mr. *Tbelluffon* having been incapacitated by a resolution of the House of Commons, all votes given to him would be thrown away.

William Maxwell was present on the hustings the first day. Previous to the opening of the poll, he heard Mr. *Tierney* give notice to the returning officer, that in consequence of the decision of a Committee of the House of Commons, Mr. *Tbelluffon* was ineligible, and that all votes given to him would be thrown away. Mr. *Tierney* afterwards addressed the electors, and informed them also, that all votes given to Mr. *Tbelluffon* would be thrown away. This was the substance of what passed. It was previous to the opening of the poll, and the whole was spoken in so audible a tone of voice, that all those who stood near the hustings must have heard it. The witness recollected distinctly, that Mr. *Tierney* gave notice both to the returning officer,
and

and to the electors. The returning officer said, he would receive the votes tendered for either candidate, that he had consulted counsel on the question of Mr. *Tbelluffon's* eligibility, and that they were of opinion that he was eligible. The electors desired he would name the counsel, to which he answered that he would. The witness supposed that he did name them, but he did not hear their names. The witness was not an elector of *Southwark*, he attended merely as a friend of Mr. *Tierney*.

William Osborne, an elector of *Southwark*, was also present on the hustings on the first day. Previous to the opening of the poll, Mr. *Tierney* did, in a particular formal manner, address Sir *Watkin Lewes* in some such words as these.—“Take notice, Sir *Watkin Lewes*, that I deem *George Woodford Tbelluffon*, esquire, incapacitated from offering himself a candidate.” This notice was given in a very audible tone of voice, and in the opinion of the witness must have been heard by the electors. The witness voted for Mr. *Tierney*.

Here Mr. *Tierney* closed that part of his case

case which related to the eligibility of Mr. *Tbelluffon*. In strictness, he had a right to sum up his case before the counsel on the other side proceeded in the defence *; but he did not claim the exercise of this right, and it would have been of no advantage to him, as the whole depended on the point of law which he had already argued fully in his opening, especially as he was entitled to reply upon the speeches of both the learned gentlemen opposed to him.

DEFENCE.

Mr. *Dallas*. It is my duty to argue in support of the eligibility of Mr. *Tbelluffon*. But, important as this question is to him, I do not feel much anxiety as to the result; although on account of indisposition, I feel myself hardly equal to the task; but it is not my practice to delay.

Of the numerous allegations contained in the petition, several have been expressly

* 1 Doug. 62.

abandoned. I have therefore, the authority of the petitioner himself; that, though he made a direct charge of bribery, that charge was totally destitute of foundation. The allegation that the petitioner had the majority of legal votes, is also expressly deserted. The whole of this case therefore, at present under consideration, resolves itself into two questions; first, the eligibility of Mr. *Tbelluffon*; and secondly, supposing him to be ineligible, whether the petitioner ought to be the sitting member. On the latter point I shall not at present make a single observation, this not being the time to discuss it: I shall confine myself to the question of eligibility.

This case grows out of the proceedings of the former Committee. It therefore became necessary to put the former petition on your minutes, to shew the nature of the complaint. In that petition the only charge is, that before the first election Mr. *Tbelluffon* had offended against the standing order of the House, and the act of King *William*, by giving to persons having votes in such election, meat and drink, after the *teste* of
the

the writ, in order to procure himself to be elected.—This is the only charge contained in the first petition. It is necessary that you should bear this in your minds.—After a close investigation of the business, that Committee resolved, “That at the last
 “election for the borough of *Southwark*,
 “*George Woodford Thellusson*, esquire, did
 “act in violation of the statute of the 7th
 “of *William* the third, cap. 4.; whereby he
 “is incapacitated to serve in parliament
 “upon such election.”

This resolution is in general terms. It merely states that Mr. *Thellusson* did act in violation of the statute of King *William*; but whether this violation was by giving money, or by giving entertainment, does not appear on the face of the resolution. It can only be collected by referring to the evidence. To prove it could not have related to bribery, as contrasted with treating, I shall give in evidence the minutes of the last Committee. In them no proof of bribery appears, nor is there any allegation to that effect in the petition. The only question then for you to determine is, whe-

ther by treating the electors of *Southwark*, in May last, Mr. *Thebelluffon* is incapacitated from serving in parliament upon an election which took place in the December following.

But this supposed ineligibility of Mr. *Thebelluffon*, has been argued upon two grounds. First, the law and custom of parliament: Secondly, the fair construction of the statute of King *William*. I shall examine both these grounds.

First—The law and custom of parliament. These can be discovered only from an examination of the rolls and records of parliament. But before I enter upon an examination of them, I shall lay down a fundamental proposition, which I request you to recollect throughout this enquiry. I admit that it appears upon the records of parliament, That from the earliest times, *bribery*, (that is) “the giving *money* for “votes,” ever did (as it ever ought) avoid an election. I admit that by the common law of parliament, such ever was the consequence of bribery; and that, by statute, *treating* is placed on the same footing as to
that

that particular, and that an election procured by it is void. So far there is no difference between us. The only question is, whether a conviction of treating incapacitates the party from filling that particular vacancy. The petitioner has contended in the affirmative, partly upon general principles, which he termed constitutional, partly on the statute, and the authority of adjudged cases. One of these principles is, that no man shall profit by a breach of positive law. Having stated this principle, and cited the special resolution of the former Committee, he fancied every thing was done. But he carefully avoided stating where this proposition is to be found, or the authority on which it rests. The reverse is not only established, on the clearest principles of law, but it is the result of necessity. In the *Flintshire* case, now depending, the objection to the sitting member is, that he is a minor, and therefore disqualified by law from sitting in parliament. This disqualification arises from a statute which also inflicts a penalty for the breach of it. Nobody, however, will con-

tend, that if after this election and before the next, Sir *Thomas Mostyn* were to come of age, this breach of a positive statute would incapacitate him from serving upon such second election ; yet he would owe his seat to his having infringed this act of parliament at the former election, and thus would profit by a breach of positive law.

Another principle laid down by the petitioner is, That no person shall be benefited by his own corrupt practices ; and, he thence infers, that Mr. *Tbelluffon* having formerly corrupted the electors of *Southwark*, is thereby incapacitated to serve on the present election. How far this argument is consistent, it is for you to judge. It is contended that the influence created by the treating at the first, must have continued to operate at the second election ; yet it is admitted, that if there had been another vacancy, Mr. *Tbelluffon* would have been eligible to fill it ; that if in the interim Mr. *Tbornton* had died, Mr. *Tbelluffon* was eligible to supply his place. Then, what becomes of this argument, or pretended principle ? This admission puts an end to it

it at once. It shews it to be inconsistent, inasmuch as it attempts to prove, that Mr. *Thebellusson* cannot be elected under any given circumstances, as long as the influence of his treating shall exist, and yet admits, that he might have been elected on a vacancy, arising from any other cause. Besides, it is a begging of the question: it assumes the very point in dispute, namely, that the treating of Mr. *Thebellusson* in May, continued to operate, and in fact influenced the votes at the last election. Such are the general principles on which the petitioner founds his case. I have endeavored to shew with what success.

If Mr. *Thebellusson* is ineligible, his ineligibility must arise, either from the common law and usage of parliament, or from the statute of king *William*. The question then, is, when by law did treating become illegal? When did it first avoid an election? When was a person, whose election was thus avoided, first rendered incapable to supply that vacancy? Bribery and treating are as distinct in law, as any two offences which the mind can suggest. I admit, that

bribery is a gross and heinous offence, which creates an incapacity; it always did so by the common law of parliament. But the very authorities quoted by the Petitioner, prove the reverse as to treating. *Whitelocke* (whom he first quoted) after enumerating what the law prohibits, "solicitations, *bribings*, gratifying of sheriffs, giving money or rewards, &c." adds, "it were well, if it extended to drink and entertainment." He states bribery to be an offence which disqualifies; he felt and deplored the want of a law to extend the same incapacity to treating, "*it were well if it extended to drink and entertainments.*" Then I am armed with an authority produced by the petitioner himself; that at the time when *Whitelocke* wrote, treating was not an offence punishable by any known law, or which created any incapacity. This is a material consideration, which renders the whole perfectly clear. It is true the resolution of the House has declared treating to be bribery; but it is a legal, general, and constitutional principle, that if at any time treating was not bribery, nothing short of an act of parliament

liament could make it so. A resolution of the House of Commons cannot make a law; at most it can declare what the law and usage have been; but we have seen from *Whitelocke*, that the law and usage were the other way.

The statute of king *William* first made treating an offence. This brings us to the enquiry, whether, under that act, an incapacity to serve in parliament attaches as a consequence of treating. This is, in fact, the only point in the cause. The whole depends upon the construction of that statute.

In construing the act, two things are to be attended to; first, the clause of prohibition; secondly, the clause of incapacitation. The first, in general terms, prohibits the giving any provision or entertainment, after the *teste* of the writ of election, in order to be elected. The second, declares the consequence of infringing it. The thing prohibited, is not prohibited at all times, and under all circumstances. The party candidate is prohibited from giving entertainments, only after the *teste* of the writ, and
before

before his election. Such are the words and language of the statute. At any other time he may treat to what amount he pleases, even with a view to be elected. What becomes then of the resolution declaring treating to be bribery, and of the inference attempted to be drawn therefrom; that all the penalties of bribery attach upon treating? The act need only to be looked at to see, that, upon a fair construction, and even according to its very letter, a candidate may, whatever be his view, treat with impunity up to the day of issuing the writ, and again immediately after the election is closed. If a candidate, with a view to being elected, shall treat to any amount during the whole of the six months next before the election, but shall stop on the day of issuing the writ, and in consequence thereof shall be returned; or, if having treated without effect, even during the election, he continue his entertainments after the close of the poll, in order to be elected upon the next avoidance; and it shall so happen, that the election of his opponent is avoided, and he himself shall then get returned; in either
of

of these cases, his election thus obtained is good and valid in law. Such is the construction put upon the act even by the petitioner himself; for at the close of the last day's poll, addressing himself to the electors, he told them, that as treating was no longer contrary to law, he hoped that Mr. *Tbelluffon* would exercise his hospitality, and he invited them all to partake of it.

The period of time within which the treating takes place, is a material ingredient in the offence. The influence excited by it, at any other time than between the issuing of the writ and the day of election, cannot render an election void. Had Mr. *Tbelluffon*, foreseeing the dissolution of the last parliament, treated for six months before, but stopt on the day of issuing the writ; then this election would not have been void, notwithstanding the influence which his treating might have created. By the express letter of the act, the prohibition to give entertainment or provision, is confined to the period between the day of issuing the writ, and the day of election. Is Mr. *Tbelluffon* at present in the situation of
having

having treated between the day of issuing the writ and the day of his election? It is not pretended, that he treated during the last election, or after the issuing of the last writ. But then, it is said that he treated after the issuing of the first writ; and that the election under that writ, having been declared void, it is as if no election had taken place. But what says the statute? "That he shall be disabled and incapacitated *upon such election*, to serve in parliament," *Such election* being a term of reference, must relate to some election which has taken place; namely, to the particular election at which the treating and entertainments were given. The prohibition of the statute begins to operate immediately on the issuing of the writ; it ceases to operate on the closing of the poll. "*Such election*," therefore, must refer to that particular election which took place between these two periods.

To support the contrary construction, the word "*such*" must be obliterated from the statute, and "*any*" inserted in its room; but then the incapacity will be general and perpetual,

perpetual, which is more even than is contended for by the petitioner. It will therefore be requisite, besides expunging "*such*" and inserting "*any*" in its room, to add a sentence, namely, "to fill up such vacancy." The words of the statute then will be "disabled and incapacitated, upon *any* election, "to fill up *such* vacancy, to serve in parliament for such county, &c." which is exactly the petitioner's construction. This is an ingenious method of construing an act of parliament. But it is not expounding an old statute, but making a new law. Without these alterations and additions, the construction contended for by the petitioner cannot be supported.

This is neither the quibble nor the sophistry of a special pleader. It is no nice or subtle distinction. The legislature thought the insertion of the words, "*such* election," to be of considerable consequence. Although the petitioner piled the Journals to the ceiling, and quoted from them fifty or sixty precedents in support of his argument; yet there is one precedent, in which the legislature has left an important document of their meaning,

meaning, which seems to have escaped his researches or his memory. The bill, when introduced into the House, had not the words "*such election*;" they were inserted afterwards, by way of amendment. The bill was couched in general terms: "disabled and incapacitated to serve in parliament for such county, &c." and "shall suffer and undergo such pains, punishments, penalties, imprisonments, censures, expulsions, and incapacities as the—" thereby creating a general incapacity to serve for that place in parliament. But on the third reading, when the question was, whether the bill, thus worded, and thus extensive in its operation, should pass; an amendment was proposed to be made by leaving out the last words, "and shall suffer and undergo, &c." and the same was, upon the question put thereupon, agreed to by the House. Another amendment was proposed to be made, by inserting the words, "upon such election;" and the same was, upon the question put thereupon, agreed to by the House, and the bill

amended at the table accordingly *. The words, "*such election*," therefore, instead of being expletives or quibbles, are the very words on which the whole construction of the act depends. This is the only case in the Journals directly in point, and the only one which the petitioner has not quoted. It directly proves, that instead of extending the incapacity, the intention of the legislature was, to restrain and confine it to that particular election, between the close of which and the *teste* of the writ, the offence had been committed. One or other of these two conclusions, therefore, must be drawn; either that Mr. *Thellusson* is for ever ineligible to serve in parliament for *Southwark*, which is not contended; or that the words, "*such election*," mean the particular election which has been avoided.

But various and different constructions of the second clause, have been stated by the petitioner: a pretty strong proof, that none of them are right. First: It is said that the incapacity is general, and extends

* 11 Journ. 387.

to every future election. Secondly : If not general, that it exists during the whole of the particular parliament. Thirdly : That it is confined to the vacancy, to fill up which, the writ originally issued. The first is abandoned on all sides ; the second also has been given up ; the whole of the case therefore is reduced to the consideration of the third.

The true meaning of the statute seems to be, that no person shall be allowed to serve upon an election obtained by his own misconduct. A person convicted of treating, is incapacitated to serve ; on what election ? on "*such election* ;" that is, on such election as he procured by his misconduct. Then the question arises, whether when he has been punished for his misconduct, by the avoidance of that election ; the incapacity extends further, to the next or any future election ? The words of the statute prove that it does not. They are mere words of reference ; there is nothing prospective in them, nor any mention of a future vacancy. By inserting the words, "*such election*," it was meant expressly to confine

confine the incapacity to that election; otherwise it would have been unnecessary to insert them. By various acts of parliament, the commissioners of the victualling office, and other contractors, are, in general terms, rendered incapable to sit or vote as members of the House of Commons, nearly in the words of the statute of king *William*. But the statute of king *William* has an explanatory clause which they have not. Lest the disability should be extended to any future election, it first confines the incapacity to the particular election; and then by a substantive clause enacts, "that such person shall be, to all intents, constructions, and purposes, as if he had been never returned or elected member for the parliament." Mr. *Tbelluffon*, therefore, is to all intents, constructions, and purposes, as if he had been never returned or elected member for the parliament; he is, therefore, to all intents, constructions, and purposes, in the same situation as every other person in the kingdom. On no principle of law or justice can his situation be stated to be different. Nothing can be clearer than the words of

the act; they put him on a footing with every other subject; he is as if he had never been elected a member for the parliament. Can it be supposed that the legislature were so absurd as to declare in the same situation as every other member of the community, a person whom they meant to punish severely, and subject to peculiar disabilities. Whether you take the whole act together, or each clause of it separately, the necessary conclusion is, that as he is in the same situation, he is under no incapacity to which every other subject is not equally liable. If you determine otherwise, you will annihilate the second clause, and repeal the statute.

But it is said, that bribery creates an incapacity.—Be it so.—It does not therefore follow that Mr. *Thebussan* is ineligible. In cases of bribery, I admit, the guilty parties have been declared ineligible to supply the vacancy. The cases of *Kirkcudbright*, *Honington*, and *Hindon*, which have been quoted, fully establish this point. These cases were determined under Mr. *Grenville's* act; but it must be recollected, that in each of these cases, bribery was a distinct allegation in the petition.

petition. Distinct acts of bribery were given in evidence, and the parties convicted were thereupon declared ineligible to serve in parliament. But these cases are not cases of treating, but of bribery. With one single exception, there is no case either before or since the statute of king *William*, where the matter of complaint was confined to treating. This must be attended to. On whatever ground these cases were determined, whether on the ground of bribery, of other corrupt practices, or of contracts for money, or upon them all combined with treating, they were not decided on the ground of treating only; bribery and treating, as I have stated, are perfectly distinct in law as well as in fact. The very naming of them marks the difference. The act of king *William* is called, "the treating act;" that of *George* the Second, "the act against bribery and corruption." Whenever these two acts are mentioned, they are thus distinguished; each by its appropriate appellation applicable to its subject matter. To shew that this distinction always existed, it is only necessary to refer

to the quotation you have heard from the notes of *Whitelocke* *.* It clearly proves, that bribery and treating were not originally considered to be the same offence.

But *Whitelocke* is not the only person who has marked the difference between them; it has been noticed, and the same construction has been put upon this statute, by almost every writer on the subject. Mr. *Simeon* is very full upon this point; he says, "the consequence arising from the
 "determination of the Committee, that a
 "candidate, or his agent, has been guilty of
 "bribery by the common law of parlia-
 "ment (as we have already shewn) is an
 "avoidance of the election. By the act of
 "king *William*, the penalty, according to
 "the strict meaning of the words, is not
 "carried further. By the words of the
 "resolution, on which the statute is form-
 "ed, and which, therefore, is a key for ex-
 "plaining it, the offence makes every *such*
 "election void as to the person so offending,
 "and renders the person so elected inca-
 "pable to sit in parliament by such election."

* Ante, p. 155.

"By

“ By the statute he is incapacitated upon such
 “ election to serve in parliament, and he is
 “ thereby declared to be to *all intents, &c.*
 “ *as if he had never been returned or elected*
 “ *member for the parliament.* It is observ-
 “ able, that the words of the resolution, after
 “ having declared the *election void* as to such
 “ person, adds further words of incapacita-
 “ tion to *fit on such election.* Now to put the
 “ same construction on both parts, is to make
 “ the statute *actum agere*; and yet to ex-
 “ tend the latter part, upon inference of a
 “ double meaning, beyond the words *such*
 “ *election*, would be repugnant with that
 “ rule of construction which says, *expressio*
 “ *facit cessare tacitum*, supposing that such
 “ an implication arose, which it does not
 “ necessarily, because the clause is in the
 “ conjunctive. The words of the statute
 “ are not wider than those of the resolu-
 “ tion, and the addition of the last clause
 “ above stated, which puts him, *to all intents*,
 “ into the situation of not having been re-
 “ turned, leaves him clearly eligible on a
 “ re-election, because by the common law
 “ of parliament, independent of the statute,

“ he remains eligible, notwithstanding the
 “ bribery *.” Hence it follows, that if, as
 I have shewn, treating was distinct from
 bribery before the statute of king *William*,
 that statute has not done away the distinc-
 tion. Bribery is the giving of money at
 any time. Treating is prohibited only
 after the *teste* of the writ, and during the
 election. Bribery does not depend on the
 construction of the statute ; it is immaterial
 at what time it is committed. Bribery
 at any time renders an election void, and
 induces future incapacity. This is the ge-
 neral law of the land, and the constant
 usage of parliament. Not so with regard
 to treating. This distinction puts an end at
 once to all the arguments drawn from deci-
 sions in cases of bribery. My proposition,
 therefore, is, that before the statute of king
William, bribery existed as an offence, treat-
 ing did not ; that is, it did not render an
 election void. No law against treating can
 be shewn previous to the statute of king
William, founded on the resolution of the
 House. Bribery was at all times an
 offence well known to the laws ; but, till

* Treatise on the law of election, 172.

that

that period treating was totally unknown to them. The offence of treating, therefore, and its punishment, must depend upon the statute. But as the treating in question did not take place within the period in which it is prohibited by the statute, it cannot affect the seat of Mr. *Thellusson*. To prove more strongly the distinction between bribery and treating; suppose, before the *teste* of the writ, Mr. *Thellusson* had distributed twenty shillings among the electors, in order to procure their votes; this would have been bribery, and would have rendered his election void. Supposing that for six months previous to the issuing of the writ he had treated the electors with the most unbounded profusion; this would not have been within the prohibition of the statute, and would not have avoided his election.

But the case may be put in a still clearer point of view. Besides the statute of king *William*, there is another act in support of the freedom of election *. Its title is, "An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament." To

* 2 Geo. 2. c. 24.

this act we must resort to see what is the crime of bribery. When that act passed, a considerable period had elapsed since the passing of the statute of king *William*, which being in *pari materia*, must have been in the contemplation of the legislature. Compare then the law, as it stood before the passing of these statutes, with the statutes themselves. The act of king *William*, which had treating only in view, no where makes any mention of bribery; and in that of *George* the Second, the sole object of which was the prevention of bribery, not the slightest notice is taken of treating. By that statute, bribery is defined to be, "to ask, receive, or take any money, or other reward, by way of gift, loan, or other device; or to agree or contract for any money, gift, office, employment, or other reward whatsoever," dropping entirely the words of the statute of king *William*, "any meat, drink, entertainment, or provision." The conclusion from this is irresistible, namely, that in construction of law treating is not bribery. This is further confirmed by the words of the oath, which the 2 *Geo.* 2. prescribes

to the elector, " That I have not received, " &c. any sum or sums of money, office, " place, or employment, gift, or reward." If treating and bribery were the same offence, the words of the statute of king *William*, " meat, drink, entertainment, or " provision," would have been inserted in this act ; but these words were either totally forgotten or purposely omitted, both in the oath and the enacting clause.

The statute of *George* the Second is not confined to the receiving money by way of gift or loan ; it goes further, and adds, " or " other device ;" thus picking and cul-ling every word the language can afford, to describe exactly the offence of bribery, and include all its branches ; yet neither in the title, the preamble, the oath, the prohibition, or the penalty, is there one single word about treating, or the giving meat, drink, or entertainment ; a clear proof that the legislature did not consider treating as tantamount to bribery.

The petitioner has said, that treating having been declared to be bribery by the resolution of the House, all the penalties of
bribery

bribery immediately attach upon treating. The statute of *George* the Second, besides perpetual incapacity, inflicts a penalty of £. 500 on a conviction for bribery. Is he ready to contend, that bribery and treating are so far the same that the disabilities of the 2d of *George* the Second also attach, and that a person convicted of treating is liable to a penalty of £. 500 *? I have now shewn, that the fundamental proposition of the petitioner, that bribery and treating are the same, rests upon a false foundation. Bribery never can be legal; treating is so, except at certain times. I have shewn, by the law and usage of parliament, by the testimony of *Whitelocke*, by the authority of *Simeon*, by a comparison of the statutes of king *William* and of king *George* the Second, upon every ground, and

* I have considerable doubts, whether treating does not come within the penalties of the 2 *Geo.* 2. I incline to think it does, upon a fair construction of the act. Does not the elector treated, "receive a reward, by way "of gift or other device, to give his vote?" Does not the candidate treating, "by gift or reward" corrupt or procure the elector to give his vote?

in every point of view in which they can be considered, that bribery and treating are offences perfectly distinct, and that the punishment of each is different.

The next point is the form of the writ. Some instances have been adduced, where the name of the person convicted has been dropped; in some the words of the writ are general; in most cases it is in the present form; so that even on the form of the writ, to judge by the majority of cases, the practice is against the petitioner; but it is said, this is an *alias* or a *pluries* writ. What then? Still it is another writ, and the question remains, whether Mr. *Tbellusson* is eligible under this second writ. Without going into the question, whether the House violated the constitution, there is a celebrated instance in point. Mr. *Wilkes* was expelled the House for a libel, and being returned a second time, his second election was avoided. But although the offence for which he was expelled had long been known to our laws, yet the resolution, avoiding his election, and seating his opponent, was deemed so dangerous a precedent, that

that after a struggle of some years, it was formally rescinded by the House as a violation of the rights of election. In all cases where the House mean to incapacitate, the incapacity is expressly stated, and appears upon the face of the writ. In the case of *Mr. Wilkes*, the Speaker's warrant expressly declared him to be ineligible. In the present case, where is it even insinuated in the writ, that *Mr. Thellusson* lies under any incapacity to serve in parliament? On the form of the writ therefore, as well as on the construction of the statute, the argument is against the petitioner*.

I shall now proceed to an examination of the cases brought forward by the petitioner in support of his construction of the statute. Three authorities have been quoted. First the Commentaries of *Blackstone*. But the petitioner admits the doctrine of *Blackstone* not to be law; it is contrary to his own construction of the statute. He admits, in opposition to *Blackstone*, that treating does not create a total incapacity to serve in parlia-

* See the writ in note (G) post.

ment; but then he endeavors to explain this passage of *Blackstone*, and turn it to his purpose. His explanation is curious. On a former occasion, in commenting on the statute, he changed the word *such* into *any*; now he inserts the word *the* before parliament. Do but insert the word *the*, he says, and every thing will be right. The omission of it was owing probably to some mistake of the compositor, or to an error of the transcriber. Do but expunge or insert words as I desire, and my arguments will be convincing, and my precedents unanswerable.

“Do but annihilate both time and place,

“And make two lovers happy.”

For the sake of argument, I will suppose this omission to have arisen from some clerical mistake, and that the word “*the*” ought to have been inserted; even then we shall be as far as ever from the point. It will then be “incapable to serve for that place in “*the parliament*,” a construction unwarranted by the statute, and which also the petitioner has already given up. Even with the insertion of “*the*,” *Blackstone* is no authority

thority for him, unless, contrary to his own admission, he is ready to contend, not only that Mr. *Tbelluffon* is ineligible to fill this particular vacancy, but that he is disqualified for the whole of this parliament.—In this instance I repeat, *Blackstone* is no authority.—He took a hasty and erroneous view of the law, and gave a false exposition of the statute.

Nor will the *Thetford* case avail the petitioner.—According to his own concessions it cannot be law in its full extent. It was a case determined by the House at large, and not by a Select Committee. This may in some measure account for its absurdity. The decisions of the House, at that time, were not the most pure; had they been tolerably decent, Mr. *Grenville's* act most probably never would have taken place. This case occasioned a considerable debate, and at length the question was carried by a majority of only 32. It can never seriously be quoted as a precedent. Had it confined the ineligibility to the particular vacancy, it might have been of some authority, but it exceeds all former limits, and extends the disqualification

cation to the whole of the parliament. The only precedent, therefore, which he has adduced, as fully substantiating his case, completely fails him, and must be rejected, not only as absurd, but as contrary to precedent and to every sound principle of law.

There remains only the second *Norwich* case, a case directly in point, decided upon due deliberation, not by the House, but by a Select Committee sworn under Mr. Grenville's act. It is the last decision upon the subject, and the only one which is according to law. That case alone is sufficient to guide your determination. I admit that these resolutions do not appear upon the Minutes or in the Journals of the House, but they were communicated by the Chairman to the gentleman who reported them. The fact of their having been entered into by the Committee cannot be disputed. It stands upon the authority of Mr. *Phelips*, the Chairman, than whom no man was ever more respected, and upon the living testimony of Mr. *Luders*. In the first *Norwich* case, there were various allegations in the petition; some were abandoned, some retained;

tained; but the main ground of complaint was treating. In the second *Norwich* case, the former petition, and the minutes of the former Committee, were read in evidence, to shew that the decision was not grounded on bribery, but on treating only; thereby properly distinguishing the two offences, on account of their different degrees of guilt and their different penalties and incapacities. Then come the two resolutions; the second absolutely decides this question, as it declares that the disqualification of the statute of the 7th of king *William* the Third, *so far as it relates to treating*, is not prospective to a future election.

But it seems, that though these resolutions were entered into so late as the year 1787, yet they are now to be overhauled, and a contrary doctrine set up. After a thorough investigation of all the precedents, and a full consideration of all the arguments on the subject, that Committee were of opinion, that, in point of law, no incapacity attached on Mr. *Hobart*, and therefore determined, that he was duly elected; he accordingly took his seat, and served during the remainder

remainder of that parliament. You are now called upon to establish the contrary to be law. It is true that you are not bound by the decision of any former Committee; but you certainly will treat their decisions with respect: And, as it is even better that the law should be certain, than that it should be rightly determined, when you find that it has once been decided by a competent tribunal, you will hesitate before you deviate from that decision, and will not venture to lay down a contrary doctrine. You will hardly think yourselves warranted in publishing to the world, that in your judgments the resolutions of that Committee are manifestly absurd, and that instead of deciding according to law, they violated its most essential and valuable principles.

I have now gone through all the observations, which strike me as necessary to be submitted to your consideration. This question has been already decided by a court of competent jurisdiction of the same nature and authority as your own. I rest my Client's case on the sound construction of the

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statute

statute of King *William*, on the law and the constant and undeviating usage of parliament; but first and chiefly on the second *Norwich* case, which I repeat is a direct authority in favor of the eligibility of Mr. *Thellusson*. Such has ever been the general opinion of the profession of the law. Such has been the decision of a former Committee of the House of Commons. Such I have no doubt will be yours. You will not easily be induced to confound right and wrong, and to stultify your predecessors. No.—You will abide by the established rules of law, and will resolve, in the words of the second *Norwich* Committee, “That the disqualification by the statute 7th and 8th *William*, cap. 4. *so far as the same relates to treating*, is not prospective to a future election;” and then you will of course declare that Mr. *Thellusson* is duly elected.

There is one other point, upon which I shall trouble you with a very few words, namely, whether supposing Mr. *Thellusson* to be ineligible, the petitioner is entitled to be seated? This not only depends upon the notice given, but also on the nature of
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the incapacity. When there is a clear, distinct, legal incapacity, perfectly notorious, notice of such incapacity is sufficient to seat the candidate with the minority of votes; and upon this sound principle, That it is wilful obstinacy and misconduct in a voter, to give his vote for a person laboring under a known incapacity. Not so, in a doubtful case; still less, where the returning officer publicly declares, that no incapacity exists. In such a case, no misconduct can be imputed to the voter. He confides in the judgment of the person, who alone can legally decide; and consequently his vote cannot be thrown away. In the present case, there was not due notice given, even if the incapacity had been clear and notorious. The whole notice proved, amounts to no more than a conversation between the petitioner and the returning officer, in which they differed in opinion, as to the eligibility of Mr. *Thehufson*, and which conversation the returning officer afterwards thought proper to repeat to the electors. The petitioner might have given notice by producing to the electors an attested copy of

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the special resolution of the Committee, as was done in the case of *Kirkudbright* *. Such a notice would have been regular; but nothing of this kind took place. Mr. *Townshend*, the deputy bailiff, though upon the hustings during all the election, never heard the whole of the resolution till it was read here the other day. Supposing therefore you should be of opinion that Mr. *Thellusson* is ineligible, yet due notice of his ineligibility was not given to the electors, and therefore, however you may decide upon the other point, there can be no pretence for seating Mr. *Tierney*.

EVIDENCE.

THE clerk produced the original minutes of the former Committee. But to save time they were not read; it being admitted on the one side, that the evidence was confined to treating; and on the other, that it was of sufficient size to justify the special report.

* *Luders*, 72.

Sir

Sir *Watkin Lewes*, high bailiff of *Southwark*, and returning officer at the last election, said, That he was present at the opening of the poll. Mr. *Tierney* addressed the electors; and after speaking to them some time, he addressed himself to him. He stated, that by a resolution of a Committee of the House of Commons, Mr. *Thellusson* was declared ineligible; and said further, that if any votes were received for Mr. *Thellusson*, he should appeal to the House of Commons. This being particularly addressed to the witness as returning officer, he felt himself called upon to state his opinion of the eligibility of Mr. *Thellusson*, and to inform Mr. *Tierney* and the electors, that he had taken the opinion of counsel thereupon; and, that their opinion was in favor of the eligibility, and that therefore he did not think himself justified in precluding the inhabitants of *Southwark* from voting for whom they thought proper. He declared this to the electors from the hustings. The counsel, to whom he alluded, were his assessors. After having had their opinion, he thought that if he should refuse votes at the

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election,

election, he should be liable to have actions brought against him as returning officer. He believed he also stated, as his own opinion, that Mr. *Tbelluffon* was eligible. Mr. *Tierney* did not produce any copy, attested or otherwise, of the resolution of the Committee against Mr. *Tbelluffon*.

SUMMING UP OF THE DEFENCE.

Mr. Serjeant *Heywood* summed up.

It is my duty to address you on the behalf of the sitting member. There are two questions in this case. The first and main question is, whether Mr. *Tbelluffon* is eligible. The second (supposing him ineligible) whether Mr. *Tierney* ought to be the sitting member. I shall argue the second question first. This case differs from all those that have been quoted. It is in evidence, that at the last election, the petitioner gave notice to Sir *Watkin Lewes*, that by the decision of the House of Commons Mr. *Tbelluffon* was ineligible. That in consequence thereof, Sir *Watkin* address-
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ed the electors, and told them, he had consulted counsel, and that their opinion was in favor of his eligibility. This cannot be deemed notice of the ineligibility sufficient to seat the petitioner. I do not mean to deny what has been quoted from my own book, I do not dispute, but that when the disability of a candidate is clear, and due notice thereof is given to the electors, his opponent must eventually be seated, though he has the minority of votes. But then the disability must be notorious and undisputed, and the notice regular. In such a case, all the votes are thrown away, and the electors deservedly lose their franchise, as a punishment for their obstinacy, in wilfully persisting in returning a person, whom the law has declared incapable to serve in parliament. But as the seating a person with the minority of votes is at all times a hardship on the electors, a Committee will in such case always proceed with the utmost caution. They will see that the disability is clear and undisputed; that regular notice was given, and that the electors acted from wilful obstinacy. The case of *Abingdon* is directly

in point. In that case, a Mr. *Bayly* and a Mr. *Mayor* were candidates, Mr. *Mayor* then being high sheriff of the county of *Berks*. At the place of election, and before the taking of the poll, public notice was given to the returning officer and to the electors, that Mr. *Mayor* being high sheriff of the county, was incapable of being chosen for that borough, and that all votes given for him would be thrown away. The question of the high sheriff's eligibility, had been previously argued by counsel at the place of election, and after their arguments were closed, the returning officer told the electors that in his opinion Mr. *Mayor*, although high sheriff, was capable of being chosen. Mr. *Mayor* was returned by a majority of votes. Mr. *Bayly* petitioned. On the trial of the petition, it was urged, that the disability being notorious, and there having been due notice, all the votes given to Mr. *Mayor* were thrown away, and the petitioner ought to be seated, though with the minority of votes. But the Committee were of a different opinion. They determined that nei-

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ther the sitting member nor the petitioner were duly elected; and, that the election was void *. In the present case, it is true, the question of eligibility was not argued by counsel on the hustings, but the conversation between Sir *Watkin Lewes* and Mr. *Tierney* was equivalent thereto. Surely wilful obstinacy cannot be imputed to the electors, because they believed the returning officer in preference to one of the candidates, and gave their votes to Mr. *Thellusson*, when they were informed by the returning officer, that he considered him to be eligible, and would receive their votes.

I now come to the main question, the eligibility of Mr. *Thellusson*. The petition, and the minutes of the last Committee, have been given in evidence; and from them, I have a right to assume, that whatever disability attaches on Mr. *Thellusson*, it arises solely from the fact of treating. From no part of the evidence does there appear to have been (as stated by the petitioner) a deliberate conspiracy of the rich to crush a poor man. The whole that can be gather-

* 1 Doug. 419.

ed from the minutes is, That the friends of Mr. *Thelluffon*, being too eager to carry their point, inconsiderately gave into an expence, which certainly, in point of law, cannot be defended. It has been argued on the other side, as if Mr. *Thelluffon* had gone to *Southwark* to dispossess Mr. *Tierney* of a local interest, and deprive him of that influence, which his services had created, and of which he had long been in possession. No such thing. The connection between Mr. *Tierney* and the borough had then existed about three days. When *Andrews* went to the three tuns tavern, to the meeting at which Mr. *Thelluffon* was proposed, he had never heard of Mr. *Tierney*, so little was he known in *Southwark* even at that time. The connection between Mr. *Thelluffon* and *Southwark* was perfectly natural. Nothing can be more natural, than that the first and most commercial borough in the kingdom, should be represented by one of the most opulent merchants in the city of *London*. I do not vindicate the treating of Mr. *Thelluffon*. But the same practice was followed by all the three candidates. It was proved in evidence

dence that houses were opened in the behalf of them all, as well by persons in the interest of Mr. *Tierney* as in that of Mr. *Theelluffon*.

As to the general principles laid down by the petitioner.—He says, that a violator of the law is not a fit person to be a maker of law. I know not whether this be meant as law or wit. If as law, the proposition is abundantly too strong. If a man commits an assault, he violates the law; will it be contended that he is therefore ineligible to sit in parliament? Nor can treating be considered as any very grievous offence, since it is allowed at all times except during an election. Treating either before the issuing of the writ, or after the close of the poll, is no offence, and will not avoid an election.

But many cases have been cited, to shew that bribery creates a disqualification. I do not quarrel with those cases; and though I have strong doubts of it myself, I have no objection to admit, for the sake of argument, that the disqualification of bribery extends to a subsequent election. But we are not now upon a question of bribery. The question is upon the statute of king
William.

William. This statute must be construed according to the general rules by which all statutes are expounded. In the interpretation of all statutes, four things are to be considered: 1st. What was the common law before the making of the act. 2d. What was the mischief for which the common law did not provide. 3d. What remedy the parliament hath resolved and appointed to cure the disease; and, 4th. The true reason of the remedy *. This is the way of interpreting an act of parliament.

First.—As to the common law. Before the passing of the act of king *William*, it appears, from the earliest authorities, that treating was not bribery. After enumerating various offences, *Whitelocke* states the punishment of bribery; “a member obtaining his election by such undue and unworthy means, will be thrown out with disgrace and the election adjudged void †. It is admitted by *Whitelocke*, that this punishment did not extend to treating; a clear proof that treating never was bribery at

* Heydon's case, 3 Rep. 7. † 1 Whitelocke, 387.

common law. What is the definition of bribery?—"Whenever a person is bound
 "by law to act without any view to his
 "own private emolument, and another, by
 "a corrupt contract engages such person, on
 "condition of the payment or promise of
 "money or other lucrative consideration,
 "to act in a manner which *he* shall pre-
 "scribe, both parties are by such contract
 "guilty of bribery*." The treating here
 complained of, cannot come within this de-
 finition of bribery. But there is also a par-
 liamentary definition of bribery. "If any
 "person shall ask, receive, or take, any
 "money or other reward, by way of gift,
 "loan, or other device, or agree or con-
 "tract for any money, gift, office, employ-
 "ment, or other reward whatever, to give
 "his vote, or to refuse or forbear to give
 "his vote: Or, if any person by himself,
 "or any person employed by him, shall, by
 "any gift or reward, or by any promise,
 "agreement, or security for any gift or re-
 "ward, corrupt or procure any person to

* 2 Doug. 400.

"give

" give his vote or to forbear to give his
 " vote : " Such person is guilty of bribery *.
 From this definition also, treating is ex-
 cluded ; but in this part of the argument
 the petitioner has been guilty of great
 inconsistency. On the trial of his former
 petition he professed purposely to wave
 all advantages which he might have de-
 rived from bribery, and from every other
 species of corruption. He charged no
 corrupt motive whatever †. Now, how-
 ever, he comes forward with a direct accu-
 sation of bribery ; and after having disavow-
 ed his intention of charging Mr. *Thellusson*
 with any corrupt motive, contends, that
 treating and bribery are the same offence ; as
 if bribery could possibly exist without a cor-
 rupt motive.

So much for the common law before the
 making of the statute. Until that statute
 passed, the law continued as laid down by
Whitelocke. If treating was not bribery at
 common law, it was not in the power of
 the House to make it so. Nothing could
 make it bribery but an act of parliament.

* 2 Geo. 2. c. 24. § 7.

† Ante, 13.

But

But the resolution of the House, although it declares treating to be bribery, shews in fact, that bribery and treating are distinct. The offence of bribery consists in the giving of money, however small the sum. By the resolution, treating to the amount of £. 10 is permitted. The treating resolution was first brought forward on the 12th Nov. 1675. On that day a petition of *George Welch*, esquire, was presented to the House, complaining of an undue election for the borough of *Eye*. It was referred to the Committee of Elections and Privileges *. What the subject of the petition was, does not appear upon the Journals; but I take it for granted, that treating was its prominent feature, as a debate immediately arose concerning the regulating the elections of members to serve in parliament, and the exorbitant drinking and expences at elections; and it was referred to a Committee to prepare and bring in a bill for regulating the the same †. A paper also containing the form of a vote or order of the House, concerning drinking, bribery, and expences

* 9 Journ. 374.

† Ib.

at elections, was referred to the Committee of Elections and Privileges, with an order to report it with speed, with their opinions thereon, to the House *. The object of the House is evident. They felt that from the influx of wealth, monied men began to shake old family interests; and they therefore wished to check the progress of the evil. When first the resolution was presented to the House, a blank was left for the sum, beyond which treating was not to be allowed. The House filled the blank with "five pounds;" but the Committee of Elections, to whom it was referred, perceived that this would be too strict, and therefore instead of five inserted ten pounds in its room †; another proof that they considered treating and bribery as distinct; bribery in the smallest degree being even at that time criminal.

Such is the treating resolution. But what force has it now? On the 2d of April, 1677, when it was finally agreed to, it was ordered to be entered among the standing

* 9 Journ. 374.

† 9 Journ. 411.

powers and instructions given by the House of Commons to the Committee of Elections *. On the 21st of October, 1678, it was again made a standing order of the House ; but from that time it never has been noticed. Thus this famous resolution, upon which the petitioner builds so much, has been totally overlooked, and for the last 120 years, the House of Commons have not even thought proper to enter it among their standing orders.

That the House of Commons had no power to enforce the resolution, when it had passed, appears from the circumstance, that in 1681 only four years after, they returned their thanks to such counties, cities, and boroughs, as had freely, without charge, elected their members. There is no instance in the Journals of their thanking counties, cities, or boroughs, for returning their members without bribery. Why ? Because bribery is an offence at common law, and the House always had the means of punishing those who were

* 9 Journ. 411. and see Grey's Debates, *passim*.

guilty of it. This is decisive. Had treating been an offence at common law, the House, instead of thanking those who had returned their representatives free of expence, would have punished the parties, who, by treating, had procured their elections in violation of the law. Their not having done so is a proof, that before the passing of the statute, there was no law which prohibited treating at elections.

The petitioner has said, that because the House had declared treating to be bribery, all the incapacities of bribery attached upon treating. There never was a more monstrous proposition, nor a more unconstitutional doctrine. According to this proposition, the House has but to declare that a common assault is murder, and the consequences and punishment of murder will attach whenever a party is convicted of an assault.

The statute of king *William* was evidently framed with a reference to the resolution of the House; it was the model on which the act was formed; like the resolution, it forbids the giving of treats and entertainments only after the *teste* of the writ, or after any place

place shall become vacant; the resolution, therefore, is a key by which it may be construed. If you are not already convinced that bribery and treating are distinct, the terms of the resolution prove them to be so. Bribery is illegal at all times, and under all circumstances; treating is legal before the *teste* of the writ. Treating is permitted to any amount in one's own dwelling-house, and to the amount of £. 10 abroad; but no man may bribe any where to the value of a single shilling. A stranger also may treat with impunity, but he cannot bribe without being liable to the penalties of bribery. The resolution, therefore, marks the distinction. By allowing treating at particular times, and at all times to a particular amount, it declares it not to be bribery; bribery being illegal at all times, in all places, and to any amount. If, therefore, treating was not an offence at common law, before the resolution, that resolution could not make it one. A resolution of the House of Commons cannot alter the law of the land. What then is the meaning of the incapacity stated in the resolution, and the in-

struction to the Committee of Elections, that "being duly proved, it shall be a sufficient ground, cause, and matter, to make every such election void as to the person so offending, and to render the person so elected incapable to sit in parliament by such election; and hereof the Committee of Elections and Privileges is appointed to take especial notice and care, and to act and determine matters coming before them accordingly." Nothing of the kind is to be found in the statute. The reason of inserting the words, "incapable to sit in parliament by such election," was, that the House felt it was necessary to guard the interests of the electors; they were unwilling to construe the corrupt practices of a candidate into a misdeed in them. This appears from the smallness of the sum. They would not disfranchise a whole borough, because they had been treated a little beyond the value of ten pounds. They therefore subjected the electors who had been treated to no punishment whatever, but confined it very properly to the candidate, in whom alone was the fault, and rendered

rendered his election void. This also proves that treating is not bribery. Nothing can be bribery which is not criminal in both parties. The resolution says, "incapable to sit in parliament by such election," evidently referring to the election, previous to which the treating was given. Nothing can be clearer; the words will bear no other construction.

Then as to the statute. It prohibits treating only after the *teste* of the writ, and incapacitates the person guilty of it only from serving *upon such election*. Treating, therefore, cannot be bribery; nor does this construction render the enacting clause a brain-blow to the preamble. The House, anxious to prevent unnecessary charges and expence at elections, brought forward this statute, not with a view of preventing bribery, (that being already sufficiently provided against) but in order to check and prevent all other charges and expences. I do not dispute the truth of the preamble, "that such exorbitant expences are contrary to law, and in violation of the freedom of elections, and might be destruc-

“ tive to the constitution of parliaments.” The act was passed to check their growth, and to prevent their rising to a mischievous height. Charge and expence, which before the passing of the statute were not illegal, are prohibited by it under particular circumstances. Whatever expence is not prohibited by that statute still remains legal; any man at this day may treat before the *teste* of the writ. I will put a case: suppose a person, previous to the first election, to have treated with a view to a second election; that he treated during the whole of the first election, and until the vacancy occasioned by avoiding that election; it cannot be contended that he would have been ineligible upon that election, or incapable thereby to sit in parliament. Mr. *Thellusson* then, if he had not been a candidate at the first election, might, notwithstanding his treating, have been elected on this vacancy. This is evident from a variety of cases. That of *New Shoreham*, in 1709, is most directly in point. In that case, there was a petition of the inhabitants, against the return of Mr. *Lloyd*, on the ground

ground that his election had been procured by treating. Evidence was given of treating on behalf of Mr. *Lloyd*; but it was all before the *teste* of the writ. Strict orders had been given for preventing treating after the writ issued. The House resolved, "that "Mr. *Lloyd* was duly elected *." This construction, therefore, rests not only on principle and reason, but on the authority of a decided case.

The resolution of the House therefore goes this length, that treating in order to be elected, if before the *teste* of the writ, shall not avoid an election. What then becomes of the argument, that the influence Mr. *Tbelluffon* created by treating at the first election continued to operate and secured the second? In the opinion of the House, all treating, previous to the issuing of the writ, was considered to pass away and leave no influence behind. The act says, if any person shall "before his or their "election." What election? Why evidently that election between which and the issuing

* 16 Journ. 263, 4.

of the writ the treating took place. *Such election* in the second clause necessarily refers to the words "*his election*" in the first. Throughout the statute the same words must have the same meaning; here the meaning is clear. The party is incapacitated to serve in parliament "upon *such election*;" that is, upon "*his election*," which is passed, and is to be deemed and taken "no member in parliament." The object, therefore, was not to punish the electors, but to affix a penalty on the candidate, and that is done by avoiding his election. The statute proceeds, "and shall be, "to all intents, constructions, and purposes, "as if they had been never returned or "elected members for the parliament." From the whole of this appears what is meant by the words "*such election*," The prohibition alludes to the election which has passed, and the treating at that election is the offence to be punished; any other construction, instead of expounding the statute, will only serve to confuse it.

But it has been argued, that the incapacity extends to a future vacancy; and for the

the purpose of this argument, the writ under which Mr. *Tbelluffon* is returned has been called an *alias* writ. This is the first time that an *alias* writ of election has been heard of ; it has no analogy to a common law *alias* ; it is to every purpose a new writ. An *alias* writ begins, " We command you *as formerly* we commanded you." No such words are to be found in the precept to Sir *Watkin Lewes*. The former writ had expired, and was *functus officio* the moment Mr. *Tbelluffon* was returned ; besides, the very argument to prove the first and second election to be the same, necessarily admits the first to have been an election ; then there is no pretence to say, that upon that election being completed, the writ did not immediately expire.

It is not requisite to say much upon the law as laid down by *Blackstone*, after what Mr. *Dallas* has stated on that subject. Had Mr. *Thornton* died, it is not denied but that Mr. *Tbelluffon* would have been eligible to supply the vacancy. This is evident from the case of *Aldborough*. In that case, the House resolved, that *Fairfax* having,

ing, contrary to the late act of parliament, expended money in order to his election to serve, &c. since the vacancy thereof by the death of Sir *Michael Wentworth*, is disabled and incapacitated *upon such election* to serve as a burghers for the said borough. What is meant by such election? Why clearly the election which had taken place upon the vacancy occasioned by the death of Sir *Michael Wentworth*, which election they declared void, and at which he had expended money contrary to the act of parliament.

As to the form of the writ, no inference can be drawn from it. It has been shewn that there are many precedents both ways. No reliance, therefore, can be placed on the arguments that are built on it.

To rebut the conclusion drawn from the *Thetford* case, viz. that a person convicted of treating is incapable to sit during the whole of that parliament, it is only requisite to consider the resolution in that case, "That Mr. *Sloane* is incapable of serving for this present parliament for the said borough." In the first place, this is a resolution

resolution of the House, not of a Select Committee sworn under Mr. *Grenville's* act. It was passed at a time when the House thought they had full power over their own members; yet even then it did not pass unanimously; there was a long debate, and it was at length carried by a majority of no more than 32. But this resolution is not law, and cannot stand for a single moment. The petitioner does not contend that Mr. *Thelluffon* is incapacitated during the whole of the parliament. But, if he is eligible to serve during this parliament on any future vacancy, there is an end of the authority of the *Thetford* case.

But we are told, that our construction of the act is a new light which burst upon the world in 1787. Mr. *Douglas* published his book in 1775, and in it states his opinion.—

“ The most obvious meaning of the words
 “ is, that the person who, in order to be
 “ elected, has been guilty of any of the dif-
 “ ferent species of bribery there described,
 “ shall be incapable of sitting by a return
 “ made of him to the particular writ, after
 “ the

“ the *teste* of which, or after the vacancy
 “ which gave occasion to it, his offence was
 “ committed.—By this construction, if upon
 “ such person being returned, and in conse-
 “ quence of the proof of the offence, his
 “ election being declared void, a new writ
 “ should issue, and he should stand again,
 “ and be chosen and returned without re-
 “ newing the offence after the *teste* of such
 “ new writ, he would be entitled to sit on
 “ this new election.*” So far, therefore,
 from this being a new light which for the
 the first time appeared in 1787, it was long
 before the deliberate opinion of Mr. *Douglas*,
 formed on a review of all the cases and au-
 thorities on the subject. Such also is the
 opinion of Mr. *Simeon*, the latest writer on
 election law. “ The consequence arising
 “ from the determination of the Committee,
 “ that a candidate or his agent has been
 “ guilty of bribery, by the common law of
 “ parliament, as we have already shewn, is
 “ an avoidance of the election. By the act of
 “ king *William*, the penalty, according to the

* 2 Doug. 411,

“ strict

* strict meaning of the words, is not carried
 “ further *.”

Such is the general construction put upon the act by the profession at large, and by all those who have written on the subject.— With the single exception of the *Thetford* case, no authority whatever can be brought against it. That such also was the meaning of those who framed the act, appears from the amendment which they adopted, and which has been stated to you by Mr. *Dallas* from the Journals. The House thought, that avoiding an election obtained by treating was a punishment fully adequate to the offence. They were unwilling to mingle two offences so distinct as bribery and treating, and therefore kept distinct the punishment of each. For what other end could the words, “ *such election,*” have been inserted on amendment, than to prevent the construction contended for by the petitioner. Omit these words, and his construction is right. The act will stand thus; “ that persons so giving, “ &c. shall be disabled and incapacitated to

* Simeon's Law of Elections, 172.

“ serve

“serve in parliament for such county, &c.” the very construction the petitioner contends for. Reinsert them and observe the difference, “incapacitated *upon such election* “to serve in parliament for such county, “&c.” It cannot be contended that these words are mere expletives, and that, though inserted upon amendment, they have no meaning in the statute.

Those, who passed the treating act, wished to make a distinction in the punishment of the two offences, because they felt there was a difference in their moral turpitude. The 2 Geo. 2. c. 24. helps the construction of the 7th of king *William*. They both are made in *pari materia*, and considering them together the system is complete. They keep the shades of crime perfectly distinct. As treating includes no moral turpitude, it is punished merely by avoiding the election procured by it, and thereby disabling the offender from reaping any benefit from his offence. Bribery, being a crime of a much deeper die, is punished by a penalty of 500*l*, by an incapacity of being re-elected, and by the loss of many invaluable privileges.

Thus there is a regular gradation of crimes and punishments. Bribery was always punishable at common law; treating was not so. Treating, being a less offence, was meant to be more slightly punished. In the act, therefore, there is not, as in the resolution, any limitation as to the expence. Under the statute an election is as much avoided by treating to the smallest amount, as where there is the greatest prodigality and profusion. But the expence in this case is not unprecedented. In the *Norwich* case a large sum was proved to have been spent. Mr. *Hobart's* election was accordingly avoided; but being returned a second time, he was declared by a Committee to be duly elected, and sat for the remainder of that parliament. Nor can it make any difference, that in this case there is a special resolution against Mr. *Thellusson*, and that there was none against Mr. *Hobart*. A special resolution cannot alter the law; it is not binding on a subsequent Committee. At most it can only be considered as the opinion of the Committee who came to it. The resolutions of the *Norwich* Committee stand upon higher ground;

ground; they were a decision on the law. Their authority indeed has been denied, because they were not delivered in public, but privately given to Mr. *Luders*. The case of *Johnstone and Sutton* * has always been considered as legal authority, yet it rests on no better foundation. The reasons of the judges, in that case, for differing with the court of Exchequer Chamber, were not delivered in public, nor would they ever have been known to the profession, had they not been communicated by Lord *Mansfield* to the gentlemen who have reported them †. In all cases it is sufficient to know that the court came to the particular decision after sufficient enquiry and argument. The reasons of judgments in a court of law never appear upon record, or on the face of the proceedings. Their authority depends upon the accuracy and faithfulness of those who undertake to report them. But the resolutions of the *Norwich* case, independently of all these advantages which they possess, derive additional authority from

* 1 Term. Rep. 493.

† lb. 544.

the circumstance, that upon that Committee there were seven professional men, perfectly well acquainted with the subject, and highly respected for their learning, especially in election law. You cannot over-rule this decision unless it be proved to be unjust and absurd. These resolutions are directly the reverse, they are founded in justice and wisdom. Nothing therefore can shake the authority of the *Norwich* case. According to that case, the statute of king *William* is not prospective to a future election; and therefore Mr. *Tbelluffon* having a decided and undisputed majority of legal votes, you are bound to declare that he is duly elected. It is beyond the power of the petitioner to persuade you to the contrary; that would be a task to which the most brilliant talents would prove inadequate.

ROBERT L. Y.

THE learned Serjeant concluded by truly describing my situation. I have indeed an arduous task to perform, and to which I feel

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my talents totally inadequate. I therefore lay in my claim to more than ordinary indulgence and attention; otherwise I shall be unable to render myself intelligible. The mass of matter is of itself sufficient to perplex; but in addition to this difficulty, I now, for the first time, have to reply upon an abstract principle of law, and to combat the legal arguments of two learned gentlemen high in their profession. The preliminary point seemed to me the most material for your consideration; namely, whether Mr. *Thellusson* is eligible? And I therefore dwelt on that topic longer than on the other, persuaded, that if that were once substantiated, it would follow as a matter of course, that I must be declared the fitting member. I therefore said little on the subject of the notice. Only read the evidence on your minutes, and no doubt will remain, but that the fullest and best notice possible was given. To whom could I so properly address myself, as to the returning officer? If my notice to the electors had been disregarded, it came authoritatively from him. He informed them that I had given notice, and
also

also gave them his own opinion on the subject, and this in so audible a tone, that he must have been heard by every elector present. One case however has been quoted to shew, that although due notice of the ineligibility of a candidate is given before the opening of the poll, yet the votes given to him are not thrown away, and that the election shall be barely avoided without seating the candidate with the minority of votes*. But that case does not in the least apply. The question there was, whether Mr. Mayor, the high sheriff of *Berkshire*, was capable of being returned for a borough in that county? He was not charged with any crime in violation of the freedom of election, or destructive to the constitution of parliaments. There existed no resolution of the House declaring sheriffs ineligible. It was a question of difficulty and doubt, in which the opinions of lawyers had much differed. But in this case, Mr. *Thellusson* had been convicted of an offence aiming at the vitals of the freedom of election, an of-

* Case of Abingdon, ante, 263.

fence which a resolution of the House and an act of parliament had declared to work an incapacity. Mr. *Tbelluffon* was upon record, a convicted violator of the laws made for the support of the purity of election. This the electors were bound to know, although no formal notice had been given. The current of authorities is in my favor. Nor has Mr. Serjeant *Heywood*, in support of his argument this day, quoted any case posterior in point of time to the publication of his book. He there lays it down as a general rule, that "after due notice given to the electors of the incapacity of a candidate, all votes given to him are thrown away and lost, and that the candidate with the minority of votes must eventually be the sitting member." There is, however, a considerable difference between the doctrine which he sports in the character of an advocate, and that which he has laid down gravely as an author. It is for you to determine to which you will pay the most attention, the doctrines entertained by him in his closet, and deliberately sent forth to the public as the calm unbiassed result of

his labor and researches, or the arguments which he now uses as counsel retained in support of Mr. *Tbelluffon*.

I have been accused of inconsistency, and of having spoken with too much asperity of Mr. *Tbelluffon*. Against him, personally, I make no complaint. He is a young man of an amiable disposition and unsuspecting character. On that account I regret the more, his having fallen into the company of men, who to serve their own ends have so grossly imposed on him. But I complain of the conspiracy of property and power, and the extensive connections which were formed in order to bear me down; and this too when I was invited to the Borough in a manner which ought to have deterred Mr. *Tbelluffon* from embarking in expence. Previous to the last general election, I was unacquainted with the electors. I had no connection with the Borough. I was known there only by my public character, and as a person zealously attached to the cause of parliamentary reform. On the *Wednesday* preceding the election, a meeting of several of the independent electors was held, at

U 3

which

which they came to the following resolution: "Resolved, That *George Tierney*, esq. "be invited to stand candidate for this Borough, upon the expected dissolution, to "represent them in parliament, viewing "him as a person zealously attached to a "parliamentary reform, by shortening its duration, and promoting a more equal representation : And at this awful and critical moment, anxious to put an end to the "present destructive and disastrous war."

This was my only letter of recommendation. I respect those who act with honor and consistency. If Mr. *Tbelluffon* disliked these principles, I cannot blame him for opposing them ; still less do I find fault with the electors in his interest. They had a right to oppose me, and to support any candidate whose opinions they found more congenial with their own. No blame could attach upon them, as long as they supported him by legal means and kept within the pale of the constitution. But the electors who invited me, were men of the strictest honor ; not content with talking of principle, they were determined to give a grand example

ample to the country and to shew not only the abuses of the constitution, but also the means of correcting them. They therefore came to two other resolutions: "That as bribery and corruption are indications of certain destruction to a kingdom, it is determined to support him on true patriotic principles, by independent suffrage and without expence." "Resolved, That while the real friends of the British constitution see with deep regret, the alarming and hasty strides made by a corrupt system, which threatens a total subversion of their liberties, they feel it their indispensable duty to set an example of purity and disinterestedness in their own persons, and earnestly call on all those to assist them, who have the courage to act from the same motives." It is unnecessary for me to add any thing to the character of these men. They have rigidly adhered to their professions, and in both elections have borne all the charge, without permitting me to be at any expence, even to the fraction of a farthing.

But it has been suggested, that *Southwark* being the first commercial borough in the kingdom, it ought to be represented by some mercantile man capable of watching over its commercial interests. Is not Mr. *Thornton* such a man? Is he ignorant of commerce, or does he require assistance? If it were right, as it certainly was, that Mr. *Thornton* should represent their commercial interests, it was also right, that those who preferred principle to wealth should have a representative. Nothing ever could be fairer, than that on the one hand they should be represented by Mr. *Thornton*, a merchant of considerable eminence and weight, and on the other hand, by a person who professed the political principles of the rest of the inhabitants. Notwithstanding all that has fallen from the learned gentlemen, I shall continue to assert, that there was at the two last elections a direct conspiracy of the rich to crush me because they thought me poor, and to bring the Borough into subjection to the Royal Exchange. If I am permitted to go into the remainder of my case,

case, I think I shall convince you of the truth of this assertion. Though Mr. *Le Mesurier*, frightened at the idea of the expence necessary to be incurred in order to oppose with effect the rising spirit of the Borough, prudently withdrew ; yet it produced in others a far different sensation. The great men of the city viewed it with indignation and resentment; a general alarm prevailed among them. The Bank, the East India House, and all the great public companies combined in support of Mr. *Thellusson*. I have seen many contested and expensive elections ; but I never saw any one before conducted on such a scale of extravagant expenditure, with such complete and avowed contempt for economy ; and where the strings of a rich man's purse were opened with so little reserve to the directions of a committee, whose profusion (to do them justice) was equal to the confidence of their employer.

There remains one other introductory point. It has been stated by the learned Serjeant, that houses were opened in my interest at the first election ; an observation which

which had been better spared. He must have recollected, that, in order to prevent any observation of this kind or any insinuation that professing principles of reform I had myself given into the abominable practices of which I accused Mr. *Thebelluffon*, I called as a witness, my only agent at that election, who was privy to all my disbursements. I asked him a question relative to the expences of the election. The learned gentlemen objected to the question. Waving the confidential situation in which he stood towards me, I then tendered him to their cross examination; but they declined to examine him. I have therefore reason to complain of this insinuation. No one instance can be adduced in which I violated the law.

I said, "that a convicted violator of the law was unfit to be a maker of law." I still maintain the proposition. There is no need of cases or quotations to support it. I will not so far insult your understandings as to waste your time in elaborately arguing the truth of a principle, the contrary of which must be abhorrent from your feelings. But the learned Serjeant says, "according to this principle,

principle, a person convicted of an assault would be incapable to sit in parliament." I confess that I do not see the inference. My proposition, however, contains no such absurdity: It is, that a convicted violator of the law, recorded by the House "guilty of an offence, in violation of the freedom of election, and destructive to the constitution of parliaments," is ineligible to serve in parliament. Such I conceive to be the law of parliament; but I may be mistaken; however if I am, and you shall decide that a man thus circumstanced may sit in the House of Commons, much as I may lament your decision, I shall have at least one comfort, that though I lose my seat, yet by having proved that the doors of the House are, according to the present system, open to such violators of the law, I shall have gained an argument in favor of reform unanswerable in the eye of common sense.

To the speech of whichever of the learned gentlemen I refer, I find that the ground of the defence is, that *treating* is not *bribery*. They both admit, that bribery disqualifies; but they contend, that the offence of Mr.

Thellusson

Tbelluffon does not come within the definition of bribery. The whole hinges upon this; it therefore becomes my duty to impress upon you, that it comes within that definition. If I succeed in this, no subtlety can induce you to seat Mr. *Tbelluffon*. *Whitelocke* has been quoted on the other side, to shew that at the time he wrote, treating was not contrary to law. From the manner in which they argued, a bystander might be led to suppose that I had quoted him to prove the contrary. But I only quoted him to shew, that the existence of the evil was at all times lamented by those who were friends to the constitution; and that the practice was always felt to be so destructive to the freedom of election, that even in the reign of *Charles* the Second, *Whitelocke* sighed for a law to restrain it. What has been quoted from *Grey's* debates strengthens my argument. It proves that the House always thought that something was necessary to be done, to check this growing mischief. It is a curious argument, that because all good men wished for such a law

a law before it passed, now it has passed, it is not to be carried into execution.

The debates upon the bill when presented to the House, shew the light in which this offence was considered. Sir *Richard Temple* “would restrain all charges “and expences, that elections might be “free *.” Serjeant *Maynard*—“This brib- “ing men by drink is a lay simony†.” Mr. *Swynfin*—“But there is one thing: that “exorbitant corruption, *amounting to no “less than bribery.*—And it is better to al- “low to give £. 1000 than to expend it so “disorderly. It makes the very parliament “have reflections upon it. Therefore would “have a bill to restrain this giving or “spending money before the election be “made‡.” Sir *Thomas Meres*—“Those “who wish not the parliament well, im- “pute these things as a scandle to us; “therefore something should be done “against drinking and bribery §.”—“This “evidence of drinking fills most of the pa-

* 4 Grey's Debates, 3. † Ib. 1. ‡ Ib. 3.

§ Ib. 4.

“pers

“pers at the Committee. The thing looks
 “not well abroad, and drinking men throw
 “away a child’s portion at an election in the
 “charge, and laborers and good handicrafts-
 “men ruin their wives and children by ill
 “habits of drinking at these elections*.” Mr.
Williams—“The abuse is so fatal and no-
 “torious at elections, that to remedy it
 “there is no remedy so fair as a law †.”
Colonel Birch.—“Corporations are ruined
 “by this debauchery; and so ill habits are
 “got not else to be remedied ‡.” Thus it
 appears, that in the debates upon this very
 bill, treating is stated by the leading mem-
 bers of the House, to be of equal, if not of
 greater enormity than bribery. “And surely
 “to canvass to be chosen a senator (as is
 “too common) by disorderly debaucheries
 “or rewards, or for private ends, is most
 “dishonorable to the persons who are so
 “chosen, to the assembly in which they
 “have the honor to be admitted; and to
 “the government of their country. They
 “who thus seek for places are the least
 “worthy of them §.”

* 4. Grey’s Debates, 96.

† Ib.

‡ Ib.

§ 1 Whitelocke’s Notes, c. 31. p. 268.

But it seems to be the aim of Mr. *Tbelluffon*, to put every thing valuable in issue. Having formerly done so by the law, he now does the same by the parliament. His learned counsel have in fact advanced the strange and monstrous proposition, that the House of Commons has no power to regulate the elections of its own members; and this because it has no power to declare that an assault is equal to murder. But though the House cannot alter the law of its own bare authority; yet it is the sole judge of what is the law and usage of parliament. It can punish those who are guilty of a breach of its privileges, and who dare to violate the freedom of election. But lawyers are not acquainted with the learning of elections; there is a particular cunning in it not known to them; nor do they go by the same rules*.

The treating resolution was not passed in a hurry, nor was the House taken by surprise. It was presented to the House in 1675, and referred to a Committee. It was reported in 1676, and was not finally agreed to

* Per Powis Justice. 2 Ld. Raymond, 944.

till

till 1677. It says, "Every such entertainment, &c. is by this House *declared* to be "bribery." Thus not making it bribery for the first time, but declaring it to be so according to the law of parliament. I admit to the learned gentlemen, that it would be a hard case to incapacitate Mr. *Thelhuffon* by an *ex post facto* law; but is this the case of an *ex post facto* law, when by a solemn decision made above a hundred years ago, the House has declared that treating is bribery? After this, it is impossible that fifteen gentlemen, upon their oaths, deriving their authority from the House, and sworn to decide according to the law of parliament, can possibly determine otherwise. "And hereof the "Committee of Elections and Privileges is "appointed to take especial notice and "care; and to act and determine matters "coming before them accordingly." Can any thing be more explicit? The House of Commons are your Masters, you are in the room of the Committee of Elections; as such you are appointed to take especial notice and care; and to act and determine accordingly. It is impossible to receive a
more

more exprefs instruction, or an order more distinct. After this you cannot entertain a doubt in what manner you are bound to decide. But it is said to be 120 years since this resolution was made a standing order of the House. That the antiquity of a law should weaken its efficacy, or diminish the reverence which is due to it, is a new discovery in the exposition of the laws of England. Whether this resolution has been renewed or made a standing order since 1678, I cannot pretend to determine; it was adopted by two successive parliaments, and was finally made a standing order of the House in 1678. As such I conceive it must remain, unless rescinded by a subsequent resolution.

The meaning of the treating resolution is clear; that upon proof of treating, Committees are to determine as if they had evidence of bribery; it matters not that the penalty is severe; if treating is declared to be bribery, all the penalties of bribery necessarily attach on treating. When a person is convicted of bribery, the Committee has no more to do; the law immediately

creates the disqualification. When by the resolution, treating is declared to be bribery, and in the statute, the giving meat and drink, and the giving of money are classed together as the same offence, to say that bribery disqualifies, but that treating does not, is a perversion of all the rules of construction. If the House of Commons, who are the guardians of the rights of election, cannot declare what shall be considered as election bribery, I know not by what means they can support the freedom of election, nor by what authority they annually resolve, "That it is a high infringement of the liberties and privileges of the Commons of Great Britain, for any Lord of parliament, or any Lord Lieutenant of any county to concern themselves in the elections of members to serve for the Commons in parliament." They have as much power to do the one as the other. A court can have no jurisdiction unless it has authority to protect itself. The House cannot protect itself, unless it can protect the freedom of election, to which it owes its being and existence.

The resolution having once been made a standing order of the House, did not require to be renewed. Mr. *Douglas*, and all writers on the subject, have so considered it ; nor has any doubt ever been entertained before of its still being in existence. The House of Commons conceived it to exist, when they not only allowed me to petition on that resolution, but heard and determined that petition, and avoided Mr. *Tbelluffon's* election. Hear what Mr. *Douglas* says upon the subject : " Treating, gifts, promises, &c. al-
 " though of the same nature with bribery,
 " yet not falling within the popular sense
 " of the word, which is confined to the ac-
 " tual payment of money, were frequently
 " substituted in place of a direct purchase,
 " *in the hopes that the offence in that shape*
 " would pass with impunity. This the
 " House endeavored to obviate by the fol-
 " lowing resolution of the 2d of April, 1677,
 " which was made a standing order on the
 " 21st October, 1678*." The meaning
 of the resolution then does not depend upon

* 2 Doug. 404.

vague conjecture. I have the grave and deliberate opinion of Mr. *Douglas*, that treating, which in the popular sense of the word, did not amount to bribery, was, by the resolution of the House, placed upon a level with it. Mr. *Luders* also considers it in the same light; he says, "The treating
 " act has a more comprehensive expression
 " than the standing order of 1678, on
 " which it was founded; the words of that
 " resolution are, " if any person shall by
 " himself, or by any other on his behalf, or
 " at his charge, at any time before the day
 " of his election, give any person or persons
 " having vote in any such election, any
 " meat or drink exceeding in the true
 " value of £. 10 in the whole; or shall
 " before such election be made and de-
 " clared, make any other present, gift, or
 " reward, &c." The statute defines the
 " time generally before his election, and
 " classes in one sentence, both the enter-
 " tainment and the other presents, *prohi-*
 " *biting both equally within the same period.*
 " But the greatest difference between the
 " resolution and the statute, consists in
 " the

“ the evidence required of the facts ; the
 “ former declares the facts alone duly
 “ proved *to be bribery and criminal* ; but the
 “ latter infers the guilt from the object
 “ and intention ; the several acts must be
 “ done in order to be elected, before the
 “ penalty attaches, according to the words
 “ of the first section of the statute *.” Mr.
 Justice *Blackstone* also, whose authority is
 now for the first time denied, in his igno-
 rance of the law, classes together bribery
 and treating, and states the statute of King
William to have been passed, to prevent the
 infamous practice of bribery and corrup-
 tion †. Lord *Mansfield*, on the debate on
 Lord *Stanhope*’s bill, also held the same
 language. In fine, all writers on the sub-
 ject uniformly agree, that treating and bri-
 bery are the same offence. Such could not
 have been their language, if this monstrous
 proposition were to prevail, that a per-
 son convicted of treating was liable to no
 heavier punishment than to have his election
 avoided.

* 1 *Luders*, 69.

† 1 *Blackstone*, 179.

In the resolutions of the House, in the decision of Committees, in the writings and speeches of lawyers, treating has been uniformly classed with bribery. Nor has there been a single instance quoted to the contrary, excepting the stray resolutions of Mr. *Phelips*. Driven to their ingenuity to support these resolutions, and to contend, that bribery and treating are distinct, they say: Bribe at any time, and to any amount however small, it is always an offence; treat to what amount you will, you are guilty of no offence, except it be between the issuing of the writ and the day of election; treating is criminal within that period only. At first sight this argument is plausible. But it is easily answered: The giving of money to electors must, from its nature, always be corrupt, and therefore is prohibited at all times, and under all circumstances. Not so with entertainments. A dinner, which is no more than an act of hospitality to-day, may, owing to circumstances, be an act of corruption to-morrow. It was not the intention of the legislature to check hospitality, but to prevent

vent such entertainments as were given from a corrupt motive, and which, by violating the freedom of election, might eventually be destructive to the constitution of parliaments ; for this purpose it was necessary to fix some point where hospitality should be deemed to cease, and corruption to commence. That point the law has fixed from the *teste* of the writ to the day of election. The law says, that treating within that given period shall be considered as bribery to all intents, constructions, and purposes, and shall be punished as such. I do not contend, that it is bribery at any other time. The treating I impute to Mr. *Thellusson* was within the period prohibited by law, and that is sufficient for my purpose. But it is said, that a candidate may treat with impunity for six months previous to the issuing of the writ. If so, this is a defect and omission in the statute ; but I much doubt whether this be law, especially when I recollect that, before the former Committee, Mr. *Dallas* objected to my examining the publicans, on the ground that their answers might criminate themselves, as the opening

their houses by order of a candidate, to entertain the electors in his interest, was not only a breach of privilege of the House, but an offence at common law, for which they might be indicted*.

But the statutes of the 7th *William III.* c. 4. and 2d *George II.* c. 24. have been referred to: And it has been urged as an argument, That the one is called the treating act, and the other is distinguished by the name of the act against bribery. But it must be recollected, that these are not the titles of the acts, but mere names, which they have received in common parlance, the one having relation more particularly to bribery by treating, and the other to bribery by money. It is true, that by these acts a penalty is inflicted for bribery by money, but not for giving treats or entertainments. But the reason of this is evident. Treating is an act of public notoriety, bribery is practised in secret. The act of *George II.* therefore, became necessary to induce persons to come forward and discover these secret practices.

* Ante, p. 101.

It

It therefore offers a reward and imposes an oath for the detection of bribery, which would be of no use for the discovery of treating. When a person is staggering with liquor, there can be no need of tendering him an oath to discover whether he has been drinking. A man may receive a bribe indirectly, but no man can eat or drink indirectly or in trust for another. This act, therefore, was necessary in aid of the statute of king *William*, so far as money was concerned; it would have been nugatory and useless, if extended to treating. No other arguments have been adduced to prove that bribery and treating are distinct.

But the 2d *George* II. c. 24. may be considered in another point of view. You, as a Committee, have no concern with it. You have no more to do with it than the courts of law have with your resolutions. The statute of the 7th *William* III. c. 4. is declaratory of the law of parliament, and the power of construing it is confined to the House of Commons. The penalties of the 2d *George* II. on the contrary, cannot be recovered before a Committee, they can only
be

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be sued for in a court of law. Excepting the 7th *William* III. there is no statute against bribery, of which the House of Commons can have cognizance, as between a candidate and themselves. Fritter down this statute, and get rid of the treating resolution, there is an end to all parliamentary punishment for bribery.

I trust that I have now satisfactorily proved, That previous to the passing of the treating resolution, it was the wish of all good men that bribery and treating should be prohibited alike: That since that resolution passed, they have ever been considered on the same footing: And that the same construction of the statute has been invariably adopted, from that time downwards, to the year 1787. The resolutions of the second *Norwich* case, in that year, have been compared to the judgment in the case of *Johnstone* and *Sutton*, and their authority has been rested on similar grounds. But though the reasons of a judgment do not appear upon record, yet they are not given in private, or when the judges are locked up, as is the case with a Committee. They are
given

given in open court. Any one may take notes of them, and if a report of them is erroneous, it may be corrected by the notes of others. Besides, the opinion of the judges in matter of law is *prima facie* evidence of the law. Not so the opinion of a Committee.—But in all cases of judgments at law, the judgment itself appears on the record. In the *Norwich* case, not only the reasons which induced the Committee to pass these resolutions do not appear, but the resolutions themselves are not upon record. No trace of them is to be found in the Journals of the House or in the Minutes of the Committee. If scraps of paper communicated to a reporter by any member of a Committee, are to have the authority of a decided case, there is no foreseeing where the mischief may end. Future reporters may not possess discrimination equal to Mr. *Luders*. They may not be as able to distinguish what is right from what is wrong. Besides, nothing can be more directly contrary to the spirit of Mr. *Grenville's* act, than to set up decisions never communicated to the parties, or even heard of, till the
Com-

Committee is discharged. But it does not even appear, that Mr. *Phelips* agreed with the Committee in the second resolution; it is only stated that the resolution was proposed, and that it was negatived*; but whether negatived unanimously; or by what majority, is not mentioned.—But much weight is to be given to these resolutions, because there were seven barristers on the Committee. In the first place, this is assuming a doubtful fact. It no where appears that these seven learned gentlemen voted against the resolution proposed, but if they did, I do not know that a precedent is the less unjust or absurd, because seven learned barristers have thought proper to club together in a gang in order to puzzle the country gentlemen, and induce them to pass a resolution contrary to law.

In the statute of king *William*, no distinction is to be found between the giving of money and giving entertainments; the *Norwich* resolutions make one. The Committee did not venture to determine, that

*3 Luders, 500.

bribery

bribery does not incapacitate.—They therefore drew a line, and taking no notice of the giving of money, determined, That the disqualification “*so far as it relates to treating,*” is not prospective to a future election. The Committee had no right to make this distinction directly in the teeth of the statute, and contrary to its spirit and its letter. No wonder they did not publish such a resolution; it must have been their wish to conceal it from the public, and after it had served its purpose, to have it buried in oblivion. Had they reported it, the House would have taken fire; they must either have repealed the statute, or have rejected the resolutions.—These resolutions therefore must be entirely discarded from your consideration.

I might however have drawn from them an argument in my favor. They prove that the words “*such election,*” on which such stress is now laid, did not strike these seven learned gentlemen as being of so much importance. They do not even seem to have been noticed by them. To seat Mr. Hobart, they resorted to other ground. By
denying

denying that the disqualification of the statute is prospective to a future election as far as relates to treating, they tacitly admit, that as to bribery, it is prospective. Then, according to their construction of the act, in a case of bribery, "*such election*" does not mean the particular election at which the bribery was committed, but refers to some subsequent or future election; but as there is no exception whatever in the act, if in the one case the disqualification extends to the vacancy occasioned by bribery, it must in the other extend to the vacancy occasioned by treating. So much for these famous resolutions: If they are to have any weight, they will so far operate in my favor.

Many ingenious arguments have been urged to prove that bribery and treating are distinct offences. I have shewn them all to be unfounded. But with all their ingenuity have the learned gentlemen either convinced you that treating is in law a less offence than bribery, or created a wish that its punishment were less severe. For my part I cordially agree with Mr. *Swynfin*, that it would
be

be better to allow to give 1000*l.* than to expend it so disorderly *. In the course of his canvass, Mr. *Thellusson* must have been eye-witness to scenes of misery and distress sufficient to rend his heart with anguish and affliction. In entering the small houses in *St. George's Fields*, he often must have seen a mother with several small starving children, eat up with illness and disease, themselves unable to gain a livelihood, and depending on the daily labor of their father for a scanty and precarious meal: If touched with such a scene of complicated misery, he had thrown ten guineas on the table, even making the father's vote the condition of the gift, the miserable starving condition of the family would in some measure have palliated the offence, and the eye of charity might have overlooked the motive, absorbed in contemplation of the good which it produced. How great then the crime to seduce the father from his work, to plunge him in debauchery and drunkenness, and deprive his helpless unoffending family of

* Ante, 301.

its only means of subsistence. In my mind this offence is more heinous than bribery, both on account of its publicity and of the drunken riot and confusion which it necessarily engenders. How absurd and wicked to deprive men of their reason at the very time that they are called upon to exercise it!

It is to you who are possessed of hereditary property that I particularly address myself. It is your own concern. Can you enter into a competition with the monied aristocracy of *London*? Will your names give currency to a bill equal to that of Mr. *Tbellusson*? You are called upon by a strained construction of the statute, not only to sap the morals of the people, but to give the death blow to all natural and legitimate parliamentary influence. Seat Mr. *Tbellusson*, and the country gentleman who has not a pocket borough at command, must bid farewell to every hope of sitting in the House of Commons. Family interest, long formed connections, well earned popularity, all must fall, when set in opposition to the profusion of a wealthy stranger. It will change

change the character of the House of Commons, it will exclude every man of moderate and independent fortune, and fill it with loan jobbers and contractors. What country gentleman can make head against a conspiracy of the rich? What man of worth and independence, will embark in a contest, which may eventually destroy his consequence and ruin his estate? Such are the natural consequences of this offence, aptly compared to simony, by Serjeant *Maynard**, and which, so far back as in the time of king *William*, had become so prevalent, that in the opinion of Mr. *Williams* it could not be remedied without a law†. If, however, on due consideration of this statute, you shall be of opinion that the words in the second clause “as if never returned or “elected,” mean (as has been contended) that a person convicted of treating shall be in no worse a situation than any other guiltless subject, then indeed you must seat Mr. *Thellusson*; but then this act, which hitherto has always been considered as an

* Ante, 301.

† Ante, 302.

act of pains and penalties, is in fact an act of indemnity, and its thundering preamble mere froth and declamation,—

—— full of sound and fury

Signifying nothing*.

Many arguments have been drawn from my admissions, but in fact I have made none. I stated that there had been two constructions of the act; that I contented myself with the narrower construction, feeling it sufficient for my purpose; but without admitting that the other could not be supported. But it has been denied that this writ is in the nature of an *alias*. But what is the writ?—“Whereas *George Woodford Thellusson*, esq. was lately chosen
“one of the burgesses, &c. for our present
“parliament, summoned to be holden, &c.
“And whereas the Lower House of our said
“parliament have adjudged the election of
“the said *George Woodford Thellusson* to be
“void, as appears, &c. By means whereof
“our subjects of the said Borough are de-
“prived of one burgess to treat for the be-

* Macbeth, Act v. Scene v.

“nefit

“nefit of the fame Borough in our faid parliament; nevertheless, we being unwilling
 “that the commonalty, &c. from the afore-
 “faid caufe, fhould be diminished or leffened,
 “whereby thofe affairs may not have a due
 “end, &c.” From the perufal of this writ
 it is evident that it is not entirely a new writ;
 it grows out of the former, and has the fame
 object to fulfil; namely, to return a bur-
 gers to the parliament to treat for the bene-
 fit of the Borough, an advantage of which
 it was deprived by the defective return made
 to the former writ. This is corroborated by
 the cafe of *Aldborough*. It makes no differ-
 ence to the argument, whether the firft writ
 be iflued on a vacancy or on the general
 election.—In that cafe *Fairfax* was incapa-
 citated. Upon what election? Upon that
 to fupply the vacancy occafioned by the
 death of Sir *Michael Wentworth*. The fe-
 cond writ was iflued to fill that vacancy.
 It makes no mention of *Fairfax*, although
 he had been elected fince the death of Sir
Michael Wentworth, and his election avoided.

* See note (G) at the end of the volume.

And here it is material to observe, that the words of the resolution against *Fairfax* are “disabled and incapacitated *upon such election* to serve for the said borough.” Yet so far was *Fairfax* from imagining that the incapacity *upon such election* applied only to the particular election that was passed, that though the writ for the next election did not issue for a twelvemonth, he did not venture to stand again, and a Mr. *Wentworth* was returned to supply the vacancy. The case of *Hindon* and many others are to the same effect.

In talking of the mysteries of the words, “*such election*,” I meant no reflection on the special pleaders. They are an useful body of men; but parliamentary law is not their element, they have no right to construe it; there is a cunning in it which they do not understand. An act passed as a bulwark of the rights of the people and of the freedom of election, is not to be frittered away by a miserable quibble on two words. Nothing can be more absurd than to contend that the words “*such election*,” were inserted in the second merely to render the particular election

tion void, and thus do away the effect of the first clause. According to this construction, the penalty only attaches upon the party actually returned. A losing candidate may treat to any amount, and if he can avoid the election of his more successful opponent he is eligible to supply that vacancy, and may be returned without being liable to any penalty for his former treating, although he may be entirely indebted to it for his election.—This has even been avowed by the learned gentlemen; but the act is not to be construed strictly for one purpose, and liberally for another; if strictly, this construction against the spirit of the act cannot be admitted; if liberally, the mischief to be prevented and the remedy intended, are too plain to require further argument.

The next election, they say, is a new election. How is it in the case of an amended return? In the present case the second election is in the nature of an amended return; it is as if the House were to say, “We know that Mr. *Thelhusson* ought not to have been returned; but we cannot discover from the return who

“ought to fill the vacancy; and therefore,
 “instead of calling in the clerk of the crown
 “to amend it, we send it back to the
 “sheriff, that he may inform himself who
 “ought to have been returned to the writ.”
 But much has been inferred from the circumstance of these words having been adopted on amendment. The reason of this is clear. Without this amendment the punishment would have been too severe for the offence; it would have created a total incapacity to serve at any time for that place in parliament. For this reason these words were inserted in the act, and the incapacity restricted to the vacancy upon that avoidance.

By way of illustration of their argument, the learned gentlemen have put the case of a minor. The incapacity of a minor, they say, is created by the 7th and 8th *William* 3. c. 25. f. 8. which is in effect the same as the last clause in the treating act; and that therefore, when an election is avoided for treating, the party is in the same situation as if his election had been avoided for being under age; that is to say, he is in the

same situation as if he had never been returned; and, as in the case of a minor, the only punishment is the losing the seat, and he is eligible to supply the vacancy, in case he shall come of age before the day of election; so here, the loss of the particular election is the only penalty, and the party may be returned, if he refrain from treating at the second election. But there is this material distinction: In the case of a minor the statute is express: "If any such minor
 " shall presume to sit or vote in parliament,
 " he shall incur such penalties and forfeitures, as if he had presumed to sit or vote
 " in parliament without being chosen or
 " returned." The statute is explicit, both as to the offence and punishment; not a word of any incapacity. The offence of the minor does not consist in being returned, but in sitting and voting in parliament under the age required by law. A minor commits no offence by the mere act of being elected; nor is he liable to any penalty whatever, unless he presume to perform the functions of a member of parliament. With treating it is otherwise; the

penalty is incurred by the act of treating, although the party should never take his seat. It attaches on account of the illegal means by which the return was obtained. The offence is compleat, even by *endeavouring* to procure a return by any corrupt practice*.

But if the meaning of the act is doubtful, you must have recourse to the usual rules of construction. "The fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by *signs* the most natural and probable, and these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law†." Let us examine the statute of king *William* by this rule. There can be no doubt, but that the object and intention of the legislature, was to prevent the expence of elections, and to ward off the danger which it threatened to the consti-

* See the standing order of the House, ante, p. 191.

† Black. Com. 59.

tution.

tution. In construing the act, by which they meant to carry into effect this intention, "the words must be understood in their usual and most known signification, not so much regarding the propriety of grammar as their general and popular use *." In their general and popular sense, what is the usual signification of the words, "incapacitated upon such election to serve in parliament for such county, city, town, borough, port, or place?" Ask any man, not educated in a pleader's office, and he will tell you, that their meaning is, that as a punishment of the offence committed at such election, the party is incapacitated from serving for that place in parliament. But if "the words happen to be still dubious, we may establish their meaning from the context, with which it may be of singular use to compare a word or a sentence, whenever they are ambiguous or equivocal. Thus the proem or preamble is often called in to help the construction of an act of parliament †."

* 1 Black, Com. 59.

† Ib. 60.

Here

Here then, call in both the title and preamble of the act, and compare them with the second clause. What could have been more absurd in the legislature than to say, we are determined to prevent all charge and expence at elections; we think it a scandalous and dishonorable practice, contrary to the laws, and in violation of the freedom of election; nay, it may be destructive to the constitution of parliaments; yet scandalous as the practice is in itself, and dangerous in its consequences, we will inflict no disability on the offender beyond the avoiding his election; he shall be, to all intents and purposes, as if he had never been returned; and though convicted of this crying offence, he shall be in the same situation as every other person in the kingdom. Can such have been the meaning of the legislature?—Then, as to the subject matter of the act. “The words must be understood as having a regard thereto; for that is always supposed to be in the eye of the legislator, and all his expressions directed to that end*.” Before

* 1 Black. Com. 60.

the making of this statute, grievous complaints had been made, and manifestly appeared to be true, of undue elections of members to parliament by excessive and exorbitant expences. This was the subject matter of the act. "But the most universal and effectual way of discovering the true meaning of a law when the words are dubious, is, by considering the reason and spirit of it, or the cause which moved the legislator to enact it*." The reason and the spirit of the statute were, to check, in the most effectual manner, excessive and exorbitant expences at elections. Then, if you still entertain a doubt upon the wording of the statute, that doubt must be fatal to Mr. *Tbelluffon*, since that construction must prevail, which is the most consistent with the reason and spirit of the law, which tends most effectually to check the evil complained of, and to advance the remedy intended.

The subject matter of the act was the exorbitant expence of elections, its reason

* 1 Black. Com. 61.

and spirit, to check that expence and preserve inviolate the freedom of election. From the *Stockbridge* case*, it appears that before the passing of this act, treating was a sufficient ground to avoid an election. The act, therefore, must have been passed with a view to something more, and to inflict a further incapacity. In fine, if you have any doubts as to the construction of any part of the act, you must refer to the context, recollecting that the subject matter of the statute was always in the eye of the legislator, and all its expressions (however ambiguous) directed to that end. Your decision will undoubtedly be such as will strike at the root of the evil, and effectually carry into execution the intention of the act; since "the office of all judges is always to make such construction, as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions, for continuance of the mischief and *pro privato commodo*; and to add force and life to the cure and remedy, ac-

* Ante, 162.

" cording

"ording to the true intent of the makers
 "of the act, *pro bono publico*.*." But the
 construction contended for on the part of
 Mr. *Tbelluffon*, is built upon a different
 principle. *Ut res magis pereat quam valeat*
 seems to be his motto. But you will not,
 for his private advantage, admit a construc-
 tion against the public good, and consent to
 suppress the remedy in order to advance the
 mischief.

It is objected to the *Thetford* case, that it
 was a decision of the House on the merits
 of an election, and therefore of no weight,
 as these decisions were generally partial:
 but this is not the case. The debate did
 not turn on the merits of the election, but
 on the construction of the act of parliament.
 It is the strongest instance on the Journals
 of a parliamentary exposition of a statute.
 It is the only statute conusable solely in the
 House of Commons. On this memorable
 debate, its construction was decided. This
 decision, therefore, is beyond the reach or
 power of attack; nor is there, during the

* Heydon's case, 3 rep. 7.

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lapse of 90 years, with the single exception of the *Norwich* case, one precedent against it.

But it is said, that this was decided by a small majority. What then? Does the value of a decision depend on the numbers of those who decided it? The circumstance of its having been carried by a small majority, is a proof that the question was much agitated; and that it had engaged the fears and expectations of many. It was on the eve of a general election. The *Sheppards* divided in the minority, and doubtless were supported by all those whose seats depended on their means of corruption. By opposing the act, they might gain double credit with those whom they intended to corrupt, and who wished to be corrupted. It proves the virtue of the majority of the House, that they could not be out-voted on a great constitutional question, when they were determined to protect their privileges by a fair and liberal construction of the statute.

Such is the *Thetford* case. The framers of the act having, by a memorable decision,
given

given their exposition of it, you will not at this distance of time say, that they were mistaken, and allow an opposite construction to appear upon the Journals. You surely have too great a respect for your ancestors; you value your own characters too highly, to transmit to posterity the idea of holding former legislatures in contempt, as incapable of understanding the meaning of their own statutes. If you decide upon the statute, the *Tbetford* case is in point, and proves the disability to extend to the subsequent election. But if I have convinced you, that bribery and treating are the same offence, then Mr. *Tbellusson* is ineligible by the common law of parliament, without the assistance of the statute. Of this the case of *Kirkudbright* * is decisive. That case could not have been decided upon the statute, as that act does not extend to *Scotland*; it must therefore have been decided on the common law and usage of parliament.

You are now to decide upon this election, and to determine whether Mr. *Tbellusson*, with

* Ante, 201.

the record of his shame upon his forehead, is, in the words of the writ, "a *fit* and *discreet* person to represent the Borough of *Southwark* in parliament." There being a special report against him, and therefore no doubt of the grounds of his conviction, can you bring yourselves to say that he is eligible? If you can, it must be by some forced construction of the act of parliament. But you must consider how far the act will bear you out. In construing it, you must be guided by the general and known rules of law. You enjoy peculiar advantages to direct your judgment. You have a construction of the act by the very men who framed it, and within three years after its enactment. You have the resolution of the House, and a current of authorities in support of one construction. There is nothing on the other side, except the stray resolutions of the *Norwich* case, and these, I repeat, are not in evidence, and must therefore be discarded from your consideration. But even were they established in proof, it would then be for you to consider how far one bad precedent can warrant you in making another.

That

That Committee were evidently ashamed (as well they might be) of their resolutions. They kept them to themselves. They did not venture to proclaim the grounds upon which they proceeded. They shrunk from public view, and took care that there should remain no record of their determination.

To conclude. You are now called upon to decide the most momentous question which has occurred since the Revolution. On your decision depend the freedom of election and what sort of men are in future to be returned to parliament. If you determine that Mr. *Tbellusson* is eligible, you will new-model the House of Commons, and totally alter the qualification required. In vain will the law say that 300 *l.* a year are a sufficient qualification; the fee simple of double that estate will be insufficient. Popular elections will become a farce, you will exclude all independent men from a chance of representing boroughs, and will deliver them without redemption to the power of the Exchange. Elections will be reduced to a trial of wealth, a mere race of purses. In future, nobody will care about

the issue of a first election. The candidate will give his friends a hint, that in return for the money he expends in entertainments, he shall expect their votes twice instead of once. Thus the expence of elections will be increased, and the people will be obliged to put up with any spendthrift who chooses to set all economy at defiance.

I entertain the highest respect for the country gentlemen in general, I respect their independence, and think them more fit to represent the people than the wealthy merchant. I feel, that a plain honest down-right man, hospitably living on his paternal estate, known to and connected in interest with his neighbours, and in some measure dependant on their good opinion, is a more proper person to guard the property of the state, and to watch over the interests and liberties of the people, than the rich speculative merchant, who with his enlarged ideas, views every thing through the medium of gain, and is accustomed to risk his all on the event of a speculation.

The eyes of the whole kingdom are fixed upon you. They wait with eager impatience

for your decision. The event of the trial of my last petition has produced much good; it has reconciled many who were discontented, and has healed the sores and poured balm into the wounds of the constitution. The House of Commons had fallen into disrepute, and grown contemptible in the eyes of many. They conceived no virtue to remain in it, and they feared that without violence from without, it never could be restored to its ancient vigour, or to its ballance in the constitution. But that decision dispelled these alarming apprehensions; it raised the House of Commons in the opinion of the people; it proved that the existing laws are in themselves sufficient for the punishment of corrupt practices, and that when the dealers in corruption are brought before the proper tribunal, there exists both spirit and integrity sufficient to enforce their strict execution. Seat Mr. Tbelluffon, and the scene will be reversed. You will undo the good of the former Committee. The grief and disappointment which will follow, will redouble the rage and violence of the reformers. They will admit, indeed, that

in that Committee there was some virtue, but they will deny it to the House at large. They will consider it as a phenomenon and as a solitary instance of a good decision and of an honorable and virtuous Committee.

In forming your decision, consider also the situation of the country, and the peculiar claim which the people have on you at this time to stand forward to protect their rights. Two bills have lately passed, which I consider as death-wounds to the constitution, and which I sincerely believe were meant to check the progress of parliamentary reform, so essential to our future existence as a free people. But I know that many are of a different opinion; and, I doubt not, voted for them from a conscientious motive, and an honest sense that they were doing their duty to their country, and that by suspending our rights for a time, they were preserving them from destruction. By these bills the best privileges of the people have been surrendered to you. You are at present not only the guardians, but the depositaries of their rights. You have now an opportunity of proving, that the constitution

tution is safe while lodged in your hands; and that when you passed these bills you were not lured by the lust of power, but really actuated by an attention to the interests of the people. By declaring Mr. *Thebussan* ineligible, you will prove, that while the people slept, you waked, and vigilantly watched their rights. And when on the repeal or natural expiration of these acts, the people shall be restored to the full enjoyment of the blessings of their former freedom, they will find, that instead of impairing you have improved the constitution which they love, and they will gratefully receive it from your hands, with renovated charms and beauty, and with additional claims on their veneration and support. Thus you will compleat the good which the former Committee commenced; thus will you confer important benefits on the country; thus will you rescue parliament from the charge of venality and corruption, and deserve and obtain the gratitude of the people, who will not fail to shower blessings on your heads and record your names among the benefactors and saviors of the country.

add.

THE determination of the Committee was reported to the House by the Chairman, Mr. Elliott, on Wednesday the 21st day of December 1796, and appears upon the Votes in the following words:

"Mr. Edward James Elliott, from the Select Committee, who were appointed to try and determine the merits of the petition of George Tierney, esquire, complaining of an undue election and return for the Borough of Southwark; informed the House, That the said Select Committee have determined,"

"That George Woodford Thellusson, esquire, is not duly elected a Burgess to serve in this present parliament for the said Borough of Southwark."

"And also, that the said Select Committee have determined,"

"That George Tierney, esquire, the Petitioner, ought to have been returned a Burgess to serve in this present parliament for the said Borough of Southwark."

"And also, that the said Select Committee have determined,"

"That

"That the said George Tierney, esquire,
"is duly elected a burges to serve in this pre-
"sent parliament for the said Borough of
"Southwark."

"And also, that the said Select Com-
"mittee have determined,"

"That the petition of the said George
"Tierney, esquire, did not appear to the said
"Select Committee to be frivolous or vexa-
"tious."

"And also that the said Select Committee
"have determined,"

"That the opposition of the said George
"Woodford Thelluffon, esquire, to the said
"petition, did not appear to the said Select
"Committee to be frivolous or vexatious."

"And the said determinations were or-
"dered to be entered in the Journals of this
"House."

"Ordered,

"That the deputy clerk of the crown
"do attend this House, to-morrow morn-
"ing, with the last return for the Borough
"of Southwark, and amend the same, by
"rasing out the name of George Woodford
"Thelluffon, esquire, and inserting the

" name of *George Tierney*, esquire, instead
 " thereof *.

When the second resolution of the Committee was made known to the parties, the chairman asked Mr. *Tbelluffon*'s counsel, if they had any thing more to urge on the part of Mr. *Tbelluffon*? They asked for time, till the next day, in order to consult their client. Mr. *Tierney* said, that he should object to their being heard at all, Mr. *Tbelluffon* being now out of court by the resolution of the Committee; in support of which doctrine he relied on the *Honiton* case before quoted †.

The next day Mr. *Dallas* informed the Committee, that he had nothing further to offer on the part of Mr. *Tbelluffon*, but desired to be heard on behalf of the electors in his interest. To this also, Mr. *Tierney* objected, the electors not being before the Committee as parties to the defence, and their votes having been thrown away and lost. The court was then cleared for the

Committee to deliberate; and on the parties being re-admitted, they were informed, That the Committee had determined,

"That the votes given for George Woodford Thelluffon, esquire, at the last election for the Borough of Southwark, were thrown away."

The parties then again withdrew, and the Committee immediately came to the other resolutions reported to the House. But it must be recollected that, though by the decision of the Committee, Mr. *Thelluffon* was out of court, as to the merits of the election, yet he had a right to be heard on the question of voting the petition, or the opposition to it, frivolous or vexatious; and that the Committee had not come to any resolution on this point, when they asked his counsel if they had any thing more to say in his behalf.

According to the regular course of proceeding, this second petition of Mr. *Tierney* ought not to have been tried till after the holidays. It was presented on Tuesday the 29th day of November, by Mr. *Whitbread*,
 who

who had been his nominee on the former Committee. As soon as the petition was brought up, Mr. *Whitbread* desired that the special report of that Committee against Mr. *Tbelluffon* *, and the resolution of the House against bribery, entered into at the beginning of each session †, might be read. Which being read accordingly, he observed, that the House ought to vindicate its own honor and dignity, by taking particular notice of these resolutions; and he hoped, that the consideration of this petition would be allowed to take place of others, that a decision might be passed as early as possible upon a subject of so much importance. He concluded by intimating his intention of submitting to the House, a motion grounded on the special report against Mr. *Tbelluffon*; but that he should defer it till after the merits of this election were tried. But, unfortunately for the cause of public justice, the insolvency of the bank, the mutinies in the navy, and the other important and unfortunate events which took place about that

* Ante, 80,

† Ante, 191.

time, so fully engrossed the attention of the House, and of the public, during the remainder of the session, as to prevent his being able to fulfil this intention.

The House concurred in Mr. *Whitbread's* observations, and ordered the petition to be taken into consideration on *Tuesday* the 13th day of *December*, which was the next open day. However, on *Monday* the 12th day of *December*, upon the suggestion of Mr. *Thellusson*, that he could not be so early prepared with an answer to the allegations contained in the petition, the consideration of it, after a debate, was, upon a division of 93 to 60, deferred till the *Friday* following, the 16th day of *December* *.

On *Monday* the 20th day of *February* 1797, Mr. *Thornton* presented to the House a petition, signed by several electors of *Southwark*, against the decision of the Committee seating Mr. *Tierney*. The petition stated, that in point of law the Peti-

* Votes 316, Debrett's Parliamentary Register, 336, 339,

tioners were warranted in the conclusion that Mr. *Tbelluffon* was competent and eligible to be elected and returned at the last election; that by the resolutions of the last Committee, a great majority of the electors were deprived of their due representation in the House; that they perceived a person, who never was entrusted or deputed by any majority of the electors, now sitting in parliament under the character of their representative.

This petition was ordered to lie upon the table.

On Wednesday the 22d day of February; Colonel *Porter* informed the House, that he had read with attention the *Southwark* petition on the table; and that he conceived the language used in it to be so insulting to the Committee, of which he had been a member, that he should make a motion upon it on the Thursday se'nnight. He afterwards postponed his motion from time to time, on account of the *Canterbury* case then before the House, which was similar to that of *Southwark*, not wishing to bring forward

OF SOUTHWARK. 349

forward any proposition, the determination of which might affect the opinion of the Committee on that case*. This motion was afterwards dropt for the same reasons as that of Mr. *Whitbread*.

* Debrett's Parliamentary Register, 1st volume for 1796-7. p. 617, 623. 2 vol. p. 151.

forward any proposition, the determination of which might affect the opinion of the Committee on that case. This motion was afterwards dropped for the same reasons as that of Mr. W. W. W.

Deputy's Parliamentary Register, in volume for 1799, p. 612, 613, 614, 615.

1799, p. 612, 613, 614, 615.

1799, p. 612, 613, 614, 615.

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1799, p. 612, 613, 614, 615.

1799, p. 612, 613, 614, 615.

[35^I]

AN ACCOUNT
OF THE
TWO CASES OF THE CITY OF
CANTERBURY;

1796 & 1797.

[32]

AN ACCOUNT

OF THE

TWO CASES OF THE CITY OF

CANTERBURY;

1790 & 1791.

FIRST CASE

OF

CANTERBURY.

SINCE the decision in the two foregoing cases of *Southwark*, the merits of the *Canterbury* Election have been determined. Mr. *Baker*, Mr. *Sawbridge*, Mr. *Gipps*, and Sir *John Honeywood*, were candidates. The two former gentlemen were returned. Against this return one *John Callaway*, and about 50 other electors in the interest of Mr. *Gipps* and Sir *John Honeywood*, petitioned. The petition charged the sitting members with having been guilty of bribery, treating, and other corrupt and illegal practices; that they had obtained thereby a majority of votes; and that they were returned although disabled and incapacitated by these practices. That the election and return were contrary to law, and highly injurious to the petitioners and to the other legal electors of the said city, as well as to

the other candidates, Mr. *Gipps* and Sir *John Honeywood*: It prayed, that the election and return might be declared void, and for such further relief as to the House should seem meet.

This petition was ordered to be taken into consideration on Tuesday the 21st day of December 1796; on which day the Committee was appointed, and consisted of the following Members:

GEORGE VANSITTART, Esquire, Chairman.

Sir Rich ^d Carr Glynn, knight.	Richard Wilson, esq.
John Angerstein, esq.	Christopher Atkinson, esq.
Henry Joddrell, esq.	The Lord Hervey.
Edw ^d Wilbraham Bootle, esq.	The Lord Huntingfield.
Edward Rushworth, esq.	Sir William Lemon, bart.
Thomas Johnes, esq.	The Earl of Tyrconnel.

Nominees:

<i>for the Petitioners.</i>	<i>for the Sitting Members,</i>
Reginald Pole Carew, esq.	The Hon ^{ble} St. Andrew St. John.

The next day when the Committee met, it was contended by the counsel for the sitting members, that in conformity to the allegations and prayer of the petition, the petitioners could only offer evidence to render the election void, and not to attempt to seat Mr. *Gipps* and Sir *John Honeywood*. But the Committee resolved, *That under*

the allegations and prayer of the petition, the counsel be allowed to go into evidence, the result of which may declare George Gipps, esquire, and Sir John Honeywood, legally elected.

The evidence was then gone into at considerable length, and the fact both of bribery and treating was established and brought home to all the four candidates. On the eighth day, the counsel for the sitting members desired to be informed from the counsel for the petitioners, whether they meant to abandon the intention of seating Sir John Honeywood and Mr. Gipps. The counsel for the petitioners answered, that upon a review of the evidence that had been given, they found themselves disappointed in the number of votes they expected to disqualify, and therefore did mean to abandon any attempt to seat Mr. Gipps and Sir John Honeywood. The counsel for the sitting members then informed the Committee, that they meant to withdraw and would give them no further trouble. The Committee then determined, " That

" neither Mr. Baker nor Mr. Sawbridge

“were duly elected.”—“That the last
 “election was a void election.”—“That
 “neither the petition nor the opposition to
 “it were frivolous or vexatious.” They
 also came to a special resolution, *That the
 evidence did not go to seating Mr. Gipps or
 Sir John Honeywood.*

SECOND CASE

OF

CANTERBURY.

A Second Election soon after took place. The same parties were candidates; and Mr. *Baker* and Mr. *Sawbridge* were again elected by a large majority, and returned. Against this second return a petition was presented, signed by the same *John Callaway* and 36 electors; setting forth the proceedings of the former Committee, and that the sitting members having offended against the standing order of the House of 1677, and the act of the 7th of king *William* the Third, c. 4. by gross bribery, treating, and corrupt practices, were, by reason thereof, ineligible to represent the city of *Canterbury* in parliament, on such renewed election; and that though they had the majority of votes, yet the returning officer ought not to have returned them, but ought to have returned Mr.

358 SECOND CASE

Gipps and Sir *John Honeywood*: Therefore praying, that they would declare the said election and return to be void; and that Mr. *Gipps* and Sir *John Honeywood* were duly elected and ought to have been returned.

There was also another petition, signed by one *John Bunyer*, and a few other electors; stating, that Mr. *Gipps* and Sir *John Honeywood*, as well as Mr. *Baker* and Mr. *Sawbridge*, were disabled and incapacitated to serve in parliament for the city of *Canterbury*, by reason of the bribery and treating, of which they had all been guilty at the former election.

These petitions were ordered to be taken into consideration on Monday the 19th day of May 1797. The Committee was composed of the following Members:

WILLIAM MITFORD, esquire, Chairman;

Jeffereys Allen, esq.	William Nisbet, esq.
John Denison, esq.	Sir Gilbert Heathcote, bart.
Andrew Strahan, esq.	Thomas Grosvenor, esq.
Tho' Rich ^d Beaumont, esq.	Joseph Holden Strutt, esq.
Sir Christ ^l Hawkins, bart.	Sir Tho' Frankland, bart.
The Lord Viscount Morpeth.	The Lord Grey.

Nominees:

For the Petitioners, Callaway and others:	For the Sitting Members:
Charles Shaw Lefevre, esq.	Joseph Richardson, esq.

The

The Committee being met on Tuesday the 20th day of May, they directed the counsel, in the first instance, to establish or disprove the merits of the petition of *John Callaway* and others.

The counsel for *Callaway* then tendered evidence to prove, that due notice had been given, previously to the election, of the ineligibility of Mr. *Baker* and of Mr. *Sawbridge*, arising out of the determination of the former Committee. The counsel for the petitioners, *Bunyer* and others, objected to this evidence, and to the admissibility of any evidence tending to seat Sir *John Honeywood* and Mr. *Gipps*. The Committee resolved, *That evidence tending to seat Sir John Honeywood and Mr. Gipps is admissible.*

It was then proved, that a written paper had been delivered to the returning officer, and by him read to the electors, previous to the poll, signed by *Callaway* and several other freemen of the city of *Canterbury*, protesting against the nomination of Mr. *Baker* and Mr. *Sawbridge*, as being ineligible to be re-elected, their former election having been declared void by reason of

divers acts of bribery and corrupt practices, duly proved against them. Another protest, signed by Sir *John Honeywood*, on behalf of himself and Mr. *Gipps*, against the return of the sitting members, and claiming to be themselves returned, was also delivered to the returning officer, and read publicly by him to the electors after the close of the poll, but before he had declared the return. Copies of these protests, and of the minutes and determination of the former Committee, and of the opinion of three counsel *, against the eligibility of the sitting members, on account of that determination, had also been circulated in hand-bills among the electors. The minutes of the former Committee were also given in evidence.

On the other side it was proved, that some electors in the interest of the sitting members, had protested against these papers as soon as they were read, and had asserted the eligibility of Mr. *Baker* and Mr. *Sawbridge*. The evidence on this first part of the case being closed, and the counsel heard, the

* Mr. Plumer, Mr. Dallas, Mr. Abbott.

Committee resolved, *That the Committee who were appointed to consider the former petition of John Callaway and others, having declared the election of John Baker, esquire, and Samuel Elias Sawbridge, esquire, void, (the said petition containing no other allegations than of bribery and corrupt practices *) ; it is the opinion of this Committee, that the said election was declared void for bribery and corrupt practices only.* They then declared Mr. Baker and Mr. Sawbridge not to be duly elected, and adjourned to the next day.

The next day, after argument, the Committee determined, *That the counsel for the late sitting members be not permitted to bring evidence to disqualify George Gipps, esquire, and Sir John Honeywood, baronet.* Whereupon the counsel for the sitting members withdrew, their Clients being no longer parties to the cause.

The counsel for the petitioners, Callaway and others, then objected to the petition of John Bunyer and others, being considered, as being contrary to the act of parliament, and founded in fraud; and

* Ante, p. 198.

offered

offered to call evidence to prove it. After argument, the Committee resolved, *That evidence to prove the fraud alledged, is admissible.*

It was admitted, that the petitioners, *Bunyer* and others, had voted for the late sitting members at the first, but that they had not voted at all at the last election. It was proved, that their petition was not intended to be prosecuted adversely against Mr. *Baker* and Mr. *Sawbridge*. That it had been presented at their desire, and was prosecuted at their expencé; that though these petitioners had not voted at the last election, yet that during the course of it the sitting members had been seen at the house of *Bunyer*, that he had canvassed for them, and that some of the voters in their interest, had been treated in his house. It was also admitted, that the agent of these petitioners before this Committee attended the former Committee, at the request of and as an assistant to the agent of the sitting members.

The counsel for the petitioners, *Calloway* and others, having summed up this evidence, the Committee directed the counsel for *Bunyer* and others, to confine his arguments,

ments, for the present, to the question of fraud alledged against the petitioners, *John Bunyer* and others. Their counsel having concluded, the other side claimed to be heard in reply; this was objected to. The Committee resolved; "*That the counsel for Callaway and others, be allowed to reply as to the matter of law only, as stated by the counsel for Bunyer and others.*" The learned counsel having been heard accordingly, the Committee resolved, "*That the fraud alledged against the petitioners, John Bunyer and others, has been proved.—That the said petition be not heard.*"

The Committee then adjourned.

The following day the Committee determined, That Mr. *Gipps* and Sir *John Honeywood* ought to have been returned: That neither the petition of *John Callaway* and others, nor the opposition of Mr. *Baker* and Mr. *Sawbridge*, were frivolous or vexatious: That the petition of *John Bunyer* and others, was frivolous and vexatious; and that the petition of *Bunyer* and others so far as it purported to be a petition against Mr. *Baker* and Mr. *Sawbridge*, was fraudulent, and had been presented for the purpose

pose of supporting the interest of these two gentlemen.

In consequence of these resolutions of the Committee, Mr. *Gipps* and Sir *John Honeywood* took their seats; but according to the practice of the House, fourteen days were allowed to the electors to petition against this return. A petition was accordingly presented, complaining of the return, and charging that Mr. *Gipps* and Sir *John Honeywood* were ineligible. This petition was ordered to be taken into consideration on Tuesday the 13th day of June, which order was afterwards discharged, the petitioners having neglected in due time to enter into the recognizances required by 28 Geo. 3. c. 52. in consequence of which neglect Mr. *Gipps* and Sir *John Honeywood* were finally seated.

Both the *Canterbury* Committees determined, “*That upon any incidental points that might arise in the course of the cause, only one counsel should be heard on each side* *.”

* I have compared with the Minutes, this account of the two *Canterbury* Cases.

N O T E S.

Note (A.) page 25.

SIR ROBERT RAYMOND, whose speech on the septennial act is quoted by the petitioner, is better known by the name of Lord Raymond, and by the valuable law reports which he has left us. He was knighted and made solicitor general in 1710, the 9th of Anne; from which office he was removed in 1714 on the accession of Geo. I. The septennial act passed in 1716. In 1720, 6th Geo. I. he was appointed attorney general. In 1723, 10th Geo. I. he was called to the degree of serjeant, and named one of the justices of the court of King's Bench. The motto on his rings was *salva libertate potens*. In the following year he was made one of the commissioners of the great seal, and created chief justice of the court of King's Bench, and raised to the dignity of a privy counsellor. His speech on the septennial bill is replete with constitutional knowledge. The sentiments of so great a judge cannot fail to be acceptable to the reader. The following are extracts from it.

“The arguments for the bill are, I think, chiefly these:

“The expences in elections, &c.

“As to the expences in elections, it must be acknowledged that they are grown very scandalous, as well as grievous and burthensome to the gentlemen of England. They have increased upon them, not from the contests of neighboring gentlemen with one another, but from strangers (by what influence or direction I cannot tell) coming

coming to their boroughs, who have no natural interest to recommend them; nothing but bribery and corruption, which has put gentlemen under the necessity of great expences to preserve their interests, and to serve their country. And you must give me leave to add, that another cause has been, the impunity that bribery and corruption have met with in this house, when they have been very notorious and very fully detected. But I fear this bill can be no cure to that evil; it will rather increase it; for as the term of the continuance of a parliament is prolonged, so the expences will increase with it. An annuity for seven years deserves a better consideration than one for three; and those that will give money to get into parliament, will give more for seven than for three years. *Nothing will so effectually prevent expences as annual parliaments. That was our ancient constitution, and every departing from it is usually attended with great inconveniences.*

"I will not trouble you farther with answers to the arguments for this bill; those against it, that weigh most with me, are these: *That frequent new parliaments are our constitution; that a long parliament is plainly destructive of the subjects just right, and many ways inconsistent with the good of the nation.* Is it reasonable any particular men should for a long time ingross so great a trust exclusive of others? Can it be of advantage to the public, that the counties, cities, and boroughs, should be long confined to those they have once chosen, their interests admitting of great variation in length of time?

"*Frequent and new parliaments are our constitution, and the calling and holding of them was for many ages the practice.* Before the conquest, parliaments were held three times every year, at Christmas, Easter, and Whitsuntide. In Edward the 3d's time, it was enacted, "That parliaments should be holden every year once, or oftener if need be." This must be understood of new parliaments, for prorogations and long adjournments were not then

then known; they were never heard of till later years; they began in Henry the 8th's time; that prince and his ministers knowing long parliaments were best fitted to make great changes. They were therefore inventions when extraordinary things were to be done, when what was then the church was to be altered, and the church lands to be taken away. There is nothing of this sort now, I hope, intended. From that time our histories tell us, that whenever the same parliaments were long continued, or the meetings of parliaments long discontinued, they gave great uneasiness. In the unfortunate reign of King *Charles* the 1st, there had been an intermission of parliaments twelve years, which produced an act of the sixteenth year of that king "for preventing the inconveniences happening by long intermission of parliaments*." That act in the preamble recites the law made in the reign of *Edward* the 3d, that parliaments ought to be held every year once, but that the appointment of time and place belonged to his majesty and his royal progenitors: and that it had been found by experience, great inconveniences and mischiefs had happened to the king and the commonwealth, by not holding parliaments accordingly; and for prevention of the like for the future, it enacts, "That the said laws shall be strictly observed, and that in case there be an intermission of the sitting of parliament for three years together, if there is a parliament in being, that parliament shall be dissolved;" and very extravagant powers were given for the calling and assembling of another: "and every such parliament was not to be dissolved without their own consent." This extraordinary step was soon followed by another, an act, "That the parliament should not be dissolved, prorogued, or adjourned, but by act of parliament; nor the houses of parliament adjourned but by themselves respectively." I need not be particular in

* Chap. vii.

recounting the consequences of this act of parliament; for every one knows that set of men when they had thus continued themselves, never stopped till they had murdered the best of princes, and entirely subverted our constitution both in church and state.

Soon after the restoration of King *Charles* the 2d, the act for the preventing the inconveniencies happening by the long intermission of parliaments was repealed, because derogatory to the prerogative, and because it might be an occasion of many mischiefs and inconveniencies, and endanger the public peace and safety; but at the same time, it is declared and enacted, "That because by the ancient laws and statutes, parliaments are to be held very often, the sitting and holding of parliaments shall not be intermitted above three years at the most." This law not having been so well observed as it ought to have been at the revolution in the convention-parliament, when it was thought necessary to declare the rights and liberties of the subjects, after many breaches had been made upon them; it was among other things declared, "That parliaments ought to be held frequently;" and what follows in that act is very strong, for it declares and enacts, "That all and singular the rights and liberties asserted and claimed in the said declaration, are the indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, and taken to be, and all the particulars thereof shall be firmly and strictly holden and observed, as they are expressed in the said declaration." The right claimed and asserted is, that parliaments ought to be held frequently; and soon after a new parliament was called, which sat annually; but this was not looked upon to be a complying with the right claimed, and therefore, after that parliament had sat three times, in the fourth session it was thought necessary to come to a further explication; and a bill passed both houses, but was rejected by the throne, "for the frequent meeting and calling of parliaments."

ments." Others were attempted in the next session; and it is well known how they came to miscarry in this house; but in the succeeding session, a bill passed both houses, and had the royal assent. That is the act this bill is to alter; but before it is altered, I hope it will be shewn, that what is asserted in the preamble is mistaken, and has proved otherwise. In the preamble, two things are asserted: "That, by the ancient laws and statutes of the kingdom, frequent parliaments ought to be held; and, that frequent new parliaments tend very much to the happy union and the good agreement of the king and his people." The first proposition is incontestible; and the latter I think will not be denied; for frequent and new parliaments create a confidence between the king and his people, a very necessary step towards an union and good agreement. If the king would be acquainted with his people, and have more the hearts of them, this is the surest way; and I am persuaded this house will never consent to any thing that may prevent the one, and intercept the other.

I cannot entertain so unworthy a thought of this house, that any gentlemen in it would at this time, in direct terms, be for perpetuating themselves; yet, if they consent to this bill, I shall reckon they are doing it; for though it only prolongs this parliament for seven years, I cannot doubt but hereafter there will be another for continuing it longer, because, before the end of this term, the reasons probably will be stronger for it than they are now. Neither can I imagine that gentlemen are afraid to trust the people's choice again. Do they think that the great and memorable things this parliament has done for the service and benefit of their country, will make them less acceptable to the people? No one will say so: and then, I see no reason why they should be for making this alteration in our laws and constitution, which will certainly have a very ill effect upon the minds of the people. For they will be ready to say, and with reason, that, after

3 the expiration of the three years, you are no longer their representatives, because they chose you to serve them no longer. With great submission I speak it; in my poor opinion, *King, Lords, and Commons, can no more continue a parliament beyond its natural duration, than they can make a parliament.* I know, at extraordinary junctures, conventions have been turned into parliaments; but it has been thought advisable soon to determine them, and to pass acts in the subsequent legal parliaments, to confirm what they have done. And I make no doubt, but (if this bill passes into a law, and this parliament is continued more than three years) there will be an act, in the succeeding parliament, to confirm whatever shall be done for the three years. There is an instance in your statute-book, where all the acts of a parliament were declared void and repealed, because the parliament was unlawfully summoned, and the members not duly chosen (b). I need not urge farther, *that the wisest governments, that have preserved a face of liberty, have never continued those long with whom they have entrusted the supreme power; that, by this bill, you have all the mischief of a long parliament, without any of the good of a short one; that a standing parliament, and a standing army, are convertible, and only necessary to support one another (c).*

^B
NOTE (A) pages 41. 67. 103.

THE following Case is much in point, and tends considerably to elucidate the law upon the subject. I was present at the trial.

(b) The parliament, 21 R. 2. was repealed by 1 H. 4. c. 3. and that of 9 Ed. 4. by 17 Ed. 4. c. 6.

(c) *Parlm. Debates*, from 1668 to the present time, printed in 1741, vol. 6. p. 439, et seq.

RIDLER

RIDLER v. MOORE and FRANCIS.

AT the last *Glocestershire* summer affizes in August, 1797, the above cause was tried before the Lord Chief Justice *Kenyon*. It was an action brought by one *Ridler*, a publican of *Tewkesbury*, against *Peter Moore* and *Philip Francis*, esquires, the two unsuccessful candidates at the last election for that borough. It was to recover the amount of a bill, for treating and entertaining, during the election, the voters in the interest of the defendants (a). The defendants had different counsel and attornies, and defended separately. It appeared in evidence, that a committee in their joint interest had been nominated by the reverend *William Smith*, who acted throughout the election as the agent of them both. He went to meet them on their arrival, carried a flag before them, and headed the procession which introduced them into *Tewkesbury*; with them he canvassed the town; he gave directions as to the manner of bringing the infirm voters in their interest to poll; he paid some of the bills incurred; was consulted by the committee when any business was done; and was generally understood to be the head of the committee: in the words of a witness, he was considered as a commander over them. Lord *Kenyon* held this to be proof of agency sufficient to affect both the defendants.

It also appeared, that by the orders of some of the committee thus appointed, a person attended at the hustings, who informed each voter, immediately on his having polled for either of the defendants, what public-houses were open in their interest, and gave him a ticket, entitling him to entertainment in the house which he preferred. One of the witnesses said, that the committee was appointed to regulate the general business of the election; and the examination was pointed to shew, that many acts were done by individual members of the committee, without either

(a) There were also a few other insignificant items in the bill; but it was principally confined to treating.

the participation of the other members, or the knowledge or privity of the defendants. But, Lord *Kenyon* held, "That the committee were collectively and individually agents, and that the defendants were answerable for every act done by any of them, in relation to the election."

It was then attempted to distinguish the case of Mr. *Francis* from that of Mr. *Moore*. It was stated to the jury, that a contract had been made between them; that, for a certain consideration, *Moore* had engaged to bear all the expence of the election, and that *Francis* had no concern in the bills incurred. But Lord *Kenyon* interrupted the learned counsel. He said, he could not permit such a contract to be stated in a court of justice. He had heard of a bill filed in the court of Chancery, to obtain an account of the profits of a partnership trade carried on at Hounslow; but when it appeared that the trade was taking the purses of those who travelled over the heath, the court would not endure the bill. This contract seemed to him to be of the same nature. By his lordship's direction, the jury gave a verdict for the plaintiff.

On these decisions of Lord *Kenyon*, two very important observations arise: 1°. As to the question so much litigated before committees, "What is a sufficient proof of agency?" 2°. As to the necessity of some additional legislative check upon the expence of popular elections.

As to the first point: According to this decision, paying the bills of a candidate, giving instructions about the polling his voters; in a word, acting in such a manner as to induce the electors in general to consider him as agent, is proof of agency, sufficient at least to call on the candidate to disprove it. In this decision, there is much sound sense as well as law. Illy indeed must an election have been conducted, where any direct proof of agency can be procured. Indirect proof must therefore of necessity be resorted to. It will be highly beneficial to the country; it will conduce much to the freedom and quiet of elections,

if

if future committees shall conform to this wise decision, and model their determinations by it. It is their duty so to do. To establish the fact of agency, stronger proof ought not to be required by committees, than is sufficient in a court of law. Committees are sworn to determine according to the law (*b*). Unless committees are strict upon this head, the wholesome laws against expence and treating at elections will continue to be constantly evaded, and will remain, as they have done heretofore, a dead letter encumbering the statute book.

2°. As to the necessity of some additional legislative check upon the expence of popular elections. The saying of Lord *Mansfield*, on Lord *Stanhope's* bill, seemed to me to apply most pointedly to this case of *Ridler*: "Shew me the offence, and I will find the law to punish it (*c*)."
Here the offence was shewn, but the law to punish it was wanting. The contract between *Ridler* and the defendants, to treat the electors, in violation of the statute of *King William*, was the offence; yet, instead of punishing, the law permitted *Ridler* to reap the benefit of his illegal contract. By way of illustration: suppose a candidate for a particular borough, and a publican of the same, to enter into the following contract, *viz.* That, in consideration of a certain reward to be paid by the candidate, the publican shall, after the *teste* of the writ, and during the

(*b*) There is this material distinction between a jury and a select committee. A jury is sworn, "well and truly to try the matter in issue between the parties, and a true *verdict* give, according to the evidence." The jury are to give a *verdict*; that is, they are to state, upon oath, the result of the facts in evidence: the court then adjudges according to the law arising upon the facts so found. A committee unite the double function of judge and jury. They are to apply the law, as well as find the fact. They are sworn, "well and truly to try the matter of the petition referred to them, and a true *judgment* give, according to the evidence." The committee are to give a *judgment*; that is, having found the fact, they are to adjudge what is the law arising upon the fact so found.

(*c*) Ante.

election, give, to persons having vote in such election, meat, drink, entertainment, and provision, in order and with a view to such candidate being elected to serve in parliament for such borough. So far it is, in point of fact, exactly the present case. Suppose, moreover, the candidate to lose his election, by the neglect of the publican, in not providing entertainment: suppose, further, the candidate to sue the publican, for a recompense in damages for the injury he has sustained by this breach of contract:—When this contract, which, according to the statute, would be “a great scandal to the kingdom, dishonourable, and might be destructive to the constitution of parliaments,” should appear in evidence, could the action upon it for a moment be endured in a court of justice? It probably would share the fate of the bill to account for the profits of the trade at Hounslow. On the score of morality, at least, there is but little difference between them. But it will be difficult to account, on any rational principle of law, how, on the one hand, a publican can recover a demand arising out of such a contract, made in violation of the statute, unless, on the other, it be admitted, that the candidate may also recover the damages he sustains, by the publican neglecting to perform his part of it. Contracts are mutual in their nature, as well as according to the etymology of the word; they are binding on both parties, or on neither. No man will deny that such a contract is a violation of the act of parliament, or assert that the statute, when it prohibits treating in the candidate, allows a publican to assist and enable him to treat with effect. If it be criminal in the candidate to treat the voter, it cannot be legal in the voter to be treated by the candidate. *Qui dat finem, dat etiam media ad finem necessaria.* So also the law which prohibits any act, prohibits the means necessary for its performance. This contract, therefore, being in violation of the statute, the plaintiff and the defendants being alike implicated in it,

I thought, at the time, according to the old law adage, "*In pari delicto potior est conditio possidentis*," that, instead of having a verdict in his favour, the plaintiff would inevitably be nonsuited. Perhaps it may appear strange to many, when a statute prohibits a particular act being done, either directly or indirectly by the candidate himself, or by any other ways or means on his behalf, that a contract with another, to do, on behalf of the candidate, the very identical act prohibited, shall, notwithstanding the statute, be a contract valid in law, and capable of being enforced in a court of justice. Yet, strange as it may appear, the law is now so settled. After the determinations, in the cases of *Smith v. Rose*, and of *Ridler v. Moore*, there can remain no doubt, but that an action will lie against a candidate, for meat, drink, entertainment and provision, furnished in defiance of the statute, on his behalf and at his charge, even by an elector of the place, to the voters in his interest. Such being the law, every one who, agreeing with our ancestors at the ever memorable and instructive æra of the revolution (*d*), thinks that elections ought to be indifferently made without charge or expence, must feel the necessity of a remedy therein. It is the extreme of nonsense to talk of the expence of elections being checked, because a candidate is forbid to treat, while the publican, who provides the treating by his orders, may by legal process compel the payment of his bill. A stop can never be effectually put to election treating, until an act shall pass, declaring all such contracts absolutely void and unavailable in our courts, leaving the publicans without remedy, where the candidate refuses payment of their bills. Were such an act to pass, small indeed would be the expence and charge of elections. Few candidates would choose to pay beforehand: few publicans would trust a candidate to any considerable amount. Mr Tierney has done much towards checking the profligacy of elections;

(*d*) Burke.

B^b 4

but

but I trust his labours are not over, while so much remains to be done. Such a bill would be worthy of him, and of his principles.

NOTE (C) page 146.

THAT the prisoners for debt, inhabiting within the rules, but without the walls of the *King's Bench* prison, have no right to vote for the election of a burgess to represent the borough of *Southwark*, though they are rated and pay to the poor of the parish of *St. George the Martyr*, in which parish the prison of the *King's Bench* is situated, seems to me undeniable on several accounts.

First,—they are not persons, “*paying scot and lot*,” within the legal meaning of the term.—To ascertain the precise original sense of this term, which is of Gothic origin, and derived to us from our Saxon laws, would be a vain endeavour; at any rate an useless enquiry. A vain endeavour, as it has eluded the laborious and indefatigable researches both of Mr. *Douglas* and of Mr. *Luders* (a); an useless enquiry, at least for any practical purpose, since at this day paying the parochial assessments, and being liable to serve parish offices, is usually understood by it, and the general acknowledged criterion of paying *scot and lot* is the poor rate, which had no existence before the statute of the 43d of *Elizabeth* (b). Viewing the term in this sense, the seeming inconsistency (c) disappears, of taking a modern invention as the criterion whereby to ascertain an ancient right. If the exercise of that right depend on the payment of parochial taxes, and the liability to bear parochial offices, whatever will best ascertain these points, is (however new in practice) the best criterion by which to determine. The circumstances

(a) Doug. 126. 140. 3 Doug. 37. 75. 126. 143.

(b) 3 Luders, 123.

(c) 3 Doug. 130.

See 23. G. 2. a 36th ^{of} ~~alteration~~ ^{alteration} of the *K.B.*
not to be rated at more than £2:15 for *Pythe*.

See also Vote 29 June 1714 in *Parl. (Anonymous)*
Hist. of the Borough, published in 2 vol. 2d 1794.
1794. page 134.

of the country varying, and new parochial services and changes being constantly introduced, the means must necessarily vary of ascertaining to whom belongs the exercise of a right, which uniformly depends on the liability or contribution to the whole of the parochial services and charges.

That such is the meaning of *paying scot and lot* appears from almost every act of the legislature on the subject. The 33 *Hen. VIII. c. 9.* recites, "that bowyers, fletchers, and other artificers resort to and inhabit nigh the city of *London*, being no freemen of the same city, nor bearing neither *scot*, *lot*, nor other charges within the said city, as other citizens and freemen of the same city do, and are bound to do, and by their oaths are sworn to do (*d*)."^(d) By reason whereof, &c. it enacts, "that the bowyers, &c. so resorting and there making their abiding, being not freemen of the said city, bearing neither *scot* nor *lot* within the said city, shall at all times, &c. (*e*)."^(e) Thus, both in the preamble and the enacting clause, *scot* and *lot* are stated as distinct. And in the enacting clause, in the words *scot* NOR *lot*, are included the whole of the charges referred to in the preamble, which the freemen of *London* by their oaths are bound and sworn to bear. In the freeman's oath is the following clause: "Ye shall be contributory to all manner of charges within this city, as summons, watches, contributions, taxes, talliages, lot and scot, and to all other charges, bearing your part as a freeman ought to do (*f*)."^(f) In this oath not only pecuniary charges are included; *watches* are expressly mentioned, an office which every inhabitant was bound to bear in his turn, and which required personal service (*g*). The words "and to all other charges, bearing your part as a freeman ought to do," I conceive to comprehend all those ward

(*d*) Section 2. (*e*) Section 3. (*f*) 2 *Luders*, 98.

(*g*) *Stretton v. Browne*, Cro. Eliz. 204. But it is said, that such a one may appoint a deputy in particular cases: 2 *Hawk. P.C.* 129. Co. Lit. 70. b.

and

and other offices which the freemen of *London* were compellable to serve.

The 11 *Geo. I. c. 18.* defines the meaning of the word *scot*. It enacts, "that the right of election of aldermen
"and common-councilmen for the several and respective
"wards of the city of *London*, shall belong to freemen
"of the said city, being householders paying *scot*, as there-
"in is mentioned and provided, and bearing lot (when
"required) in their several and respective wards, and to
"none other whatsoever (*b*).¹ And for the better ascer-
taining what are the rates and taxes to which such house-
holders ought to contribute and pay their *scot*, the same
are thereby declared and enacted to be "a rate to the
"church, to the poor, to the scavenger, to the orphans,
"and to the rates in lieu of or for the watch and ward,
"and to such other annual rates as the citizens of *London*
"inhabiting therein shall be thereafter liable unto, (other
"than and except annual aids granted or to be granted
"by parliament). And in case any such householder,
"within the time required by the act, shall have been
"rated and charged, and contributed and paid his *scot* to
"all the said rates or taxes, or *thirty shillings* a year to
"all or some of them (except as aforesaid), every such
"person shall be deemed and taken to be a person paying of
"scot (*i*).² Partners or persons living in the same house,
and having inhabited for the time therein mentioned,
"shall, paying their *scot* in manner aforesaid, and bearing
"their respective proper lots, if required, have votes at the
"elections aforesaid (*k*).³ But no persons shall be obliged
"to pay any *scot*, or bear any lot, from the doing of
"which they are or shall be exempted and discharged by
"act of parliament, charter, or writ of privilege. But
"such person and persons so exempted and discharged,
"shall and may vote at any election of any alderman,
"common-councilman, or other officer usually chosen at

(*b*) Section 8. (*i*) Section 9. (*k*) Sections 10, 11.

"the

"the wardmotes of the said city, notwithstanding he or they shall not have borne such lot, or paid such scot, in such manner as he or they should have done in case that act had not been made, and no otherwise (1)."

Thus the distinction between *scot* and *lot* is clearly ascertained. To vote at an election for *London*, a freeman must not only have paid his *scot*, but he must also (if required) have borne his *lot* in his proper ward. Payment of *scot*, according to this statute, includes every ward and parochial rate or assessment. What then is the meaning of the other branch of the qualification, "bearing of *lot* (when required) in their respective wards"? What can it mean, but the bearing the different ward offices which the freemen of each ward are bound to serve by turns, or to which they are liable to be elected at their wardmotes? As the parochial and ward rates are always in existence, a freeman must have paid them, either in whole or in part, before he is entitled to vote; but as he may never have been elected or ballotted to a ward office, it is only necessary that he should bear his *lot* when required. And, what liability to serve parochial offices, as well as payment to parochial assessments, is the legal meaning of the term, *paying scot and lot*, I remember to have heard laid down by Mr. Justice *Heath*, at the *Oxford* summer assizes 1794, in a cause between the corporation and the university of *Oxford*, in which the Mayor, &c. of *Oxford* were the plaintiffs; and one *Taman*, a hair-dresser, was the nominal defendant.

The benchers (*m*) may indeed be rated to the poor, and pay their *scot*; but, can they bear their respective *lots* if required? The rules of the prison do not extend over the whole of the parish of *St. George*. So that if they were to be appointed to an office, they would be

(1) Section 12.

(*m*) The prisoners for debt, inhabiting houses within the rules of the King's Bench prison, are indiscriminately called *benchers*, *rylers*, or prisoners living within the rules.

unable

unable to discharge its duties in a considerable part of the parish, unless they had a day rule, which can only be obtained in term time, and then is grantable as a matter of favour, and never as a matter of right. But, the poor rate is the criterion of paying scot and lot; and if a person be rated, and has paid, no more is required:—true, the poor rate is the criterion by which we usually determine; that is to say, it is the best evidence in general which can be procured of the party's qualification; but it is only evidence, and like all other evidence may be rebutted. Thus other evidence is often called in to explain a rate (*n*); or to shew that a person rated in the books, and who has paid the rate, has no right to vote, he having since applied for and received parochial relief.

Secondly.—Should the above explanation of the term “paying scot and lot” be deemed erroneous, still I apprehend that the benchers have no right to vote; and for the following reasons,

1^o. The receiving of alms is in all cases a disqualification, where the right of voting is personal, as it is in scot and lot (*o*). So also is the receiving parish relief (*o*). By the 43 *Eliz.* c. 2. “The justices of peace of every county or place corporate, in their general sessions, yearly, as often as they shall think meet, shall rate every parish to such a weekly sum of money as they shall think convenient, so as no parish be rated above, &c. (*p*)” And they shall at the same sessions “set down what competent sums of money shall be sent quarterly out of every county or place corporate *for the relief of the poor prisoners of the King's Bench and Marshalsea, &c.* so as there be sent out of every county, yearly, *twenty shillings*, at the least, to each of the said prisons of the *King's Bench and Marshalsea* (*q*).” What is

(*n*) 2 *Luders*, 519, et seq.

(*o*) 1 *Luders*, 197. 1 *Whitelocke's Com.* 386.

(*p*) Section 12.

(*q*) Section 14.

this but an annual receipt of alms or parochial relief from every parish in the kingdom?

2°. "The principle upon which the receiving of alms is supported as a disability by the common law of parliament is, that the voter who receives them must be presumed to be in so low a state of indigence that he cannot have any independent will of his own, or exercise any sound discretion in giving his vote. The poverty of the voter is the matter to be ascertained, and the receipt of alms is the evidence to prove it (r)." — The 23 Geo. III. c. 23. in its preamble assumes, that on account of their distressed circumstances, the prisoners renting houses within the rules of the King's Bench prison would, if allowed to gain a settlement there, soon become chargeable to the parish, and heavy and grievous burthens on its inhabitants: it therefore enacts, "for the relief and convenience of the parish, that no prisoner or prisoners in the King's Bench prison, or the rules thereof, shall gain, or be adjudged or deemed to gain a settlement in that parish by renting a house or any other premises whatsoever within the said parish, or by being rated to and paying any rates or taxes for the same whilst he, she, or they shall be such prisoner or prisoners (s)." Can such persons be presumed to be in any other than so low a state of indigence, that they cannot have any independent will of their own, or exercise any sound discretion in giving their vote?

3°. To be entitled to vote the party must not only be a person paying scot and lot; he must also be a bona fide inhabitant. By 23 Geo. III. c. 23. "whenever any prisoner or prisoners in the King's Bench prison, or the rules thereof, or any of his family, shall be relieved or supported, or removed to their respective places of settlement by the said parish of St. George the Martyr, or shall become any ways burthensome to the said

(r) Heywood on Elections, 170.

(s) Section 1.

" parish,

"parish, all such charges and expences as shall be actually incurred and paid by the overseers of the poor or vestry of the said parish on any of the above accounts, shall be borne and repaid to the said overseers by the respective parishes and places to which they shall belong (t)." Can a person be deemed a *bona fide inhabitant* of a parish, in the concerns of which he has no interest whatever; in which he cannot even gain a settlement by the usual and common means; from which, however distressed in circumstances or health, he is entitled to no relief; and the overseers of which, if they think proper, either from charity or any other motive, to relieve his wants, have a legal right to a reimbursement of all charges and expences actually incurred and paid by them, from the parish or place to which he shall belong? An inhabitant is one that hath lands or tenements in his own possession, and maintenance in the county, &c. and is thereby liable to public charges. Nor is this the first time that the right of benchers to vote has been called in question. In the year 1702, Mr. Lade petitioned the house against the returns of Mr. Cox and Mr. Cholmley: he contended, "that the election was void, because a riot was committed by the servants and agents of the sitting members at the time of the election; and he also claimed to be heard on the right of election." The fact of the riot was clearly established. On speaking to the right of election, Mr. Lade's counsel insisted, "that the inhabitants at large had been admitted to vote, *under which pretence the prisoners of the King's Bench had sometimes voted, and so many others, that it was impossible ever to have a fair election, or any scrutiny; that none of common right ought to vote, but such as were liable to pay wages to their members, and these were only such as paid scot and lot.*" This they insisted on, but produced no evidence.

(t) Section 2.

(u) Institute 702.

The house came to no specific resolution as to the right of the prisoners by name, but they avoided the election, and resolved, "that the right of electing burgesses to serve "in parliament for the borough of *Southwark*, in the "county of *Surrey*, is only in the inhabitants thereof "paying scot and lot." Thus it appears, that, in 1702, the right of the benchers to vote was denied; that though they had *sometimes* been admitted to vote, it was always under the pretence, that the right of election was in the inhabitants at large, and that they never to that time had been considered as coming within the legal meaning of the description "*inhabitants paying scot and lot (w)*," in whom alone the right of election is now vested.

At the second election I objected to their votes being received, and argued the point at some length. There had been no contest for *Southwark* since the passing of the act of the 23 *Geo. III.* and it did not appear whether their votes had ever been objected to on any former election. This being the first time (for any thing that was then shewn to the contrary) that their right of voting had been called in question, the learned serjeant (*x*), who with his usual learning and candour assisted the returning officer as his assessor, advised him not to disfranchise them at once by an absolute rejection of their votes. They were therefore admitted to poll, but with a *quare* prefixed to their names, in order that their votes might be expunged if their numbers materially affected the return, and upon a scrutiny and further investigation it should clearly appear, in point of law, that they were not qualified to vote. I shall only add, that I know the deliberate opinion of that learned serjeant to be, that they have no right to vote; he authorized Mr. *Turney*, if he should find it necessary, to state such, as his opinion, to the committee who tried the merits of the second election. I have treated this point at large, in hopes

(w) *xiv. Journ. 24.*

(x) Mr. Serjeant Runnington.

it may be of use, at future elections, to the real electors of the borough of *Southwark*.

A few months ago a Mr. *Dawes* published a pamphlet, to prove that the decision of the second committee was erroneous. In the course of that pamphlet, he contends that the benchers have a right to vote. The following is his argument. "A prisoner in the King's Bench, but "who was an inhabitant of a house in the borough, for "which he was rated and paid, was held a good vote. "The contrary was contended for, because he could not "serve the office of constable. Certainly not, while "confined, but he might when enlarged; and it was sufficiently hard, that he should be deprived of his liberty "by his imprudence or misfortune, without being disfranchised of his vote." The same argument would prove that a pauper or a felon has a right to vote. But he continues: "This was satisfactory to all parties, a few "only excepted, who seemed disposed to be satisfied with "nothing but their own opinions upon it, in the avowal "whereof they were not always *morally* decorous, nor "personally respectful. They were entire strangers." The reader will decide whether this curious attempt at reasoning is conclusive; in the mean time, I fear that I must rank myself among those dissatisfied strangers, who were neither *morally* decorous, nor *personally* respectful.

At the first election, this Mr. *Dawes* acted as assessor to Sir *Watkin Lewes*. At the second, he appeared in the more subordinate character of a kind of second or under assessor to Mr. Serjeant *Runnington*. Upon enquiry, I find that he is a barrister of the *Inner Temple*. His pretensions to the office of assessor, and the reason and manner of his appointment, will best appear from the following extract from the examination of Sir *Watkin Lewes* before the second committee.

SECOND

SECOND DAY.

Lunæ, 19^o die Decembris, 1796.

Sir Watkin Lewes (sworn).

Question. Mr. Serjeant Heywood. Did you hear Mr. Tierney, before the poll was open, address the electors?

Answer. Sir Watkin Lewes. Yes; and after speaking to them some time, he addressed himself to me. He stated, that by a resolution of a committee of the House of Commons, Mr. *Thelluffon* was declared ineligible; and said further, that if any votes were received for Mr. *Thelluffon*, he should appeal to the House of Commons. This being addressed to me particularly, I felt myself called upon to state my opinion as to the eligibility of Mr. *Thelluffon*, and to inform him and the electors, that I had taken the opinion of counsel as to the eligibility of his opponent;—that the opinion of counsel was, that he was eligible; and I did not conceive myself, as returning officer, justified in precluding the electors of the town and borough of *Southwark* to give their votes for whom they thought proper.

Q. Were the counsel to whom you alluded, your assessors?

A. Yes; and I declared that I had required their assistance, to enable me to decide upon any questions that might arise during the course of the election.

Cross-examined by Mr. Tierney.

Q. Mr. Tierney. What is Mr. Dawes, your assessor?

A. Sir Watkin Lewes. A gentleman at the bar: he practises there now, *I believe*: he acted as my assessor at the last election.

Q. How came you to have two assessors this election?

A. I did it, because I thought it would produce greater satisfaction to the electors, as well as to myself.

Q. Had you two assessors at the preceding election?

A. I had not.

Q. Where does Mr. Dawes live?

A. In one of the inns of court, *I believe*.

Q. Were Mr. Serjeant Runnington and Mr. Dawes appointed your assessors at the same time?

C c

A. They

A. They were not. Mr. Serjeant *Runnington* was appointed first. Afterwards, receiving information that Mr. *Dawes* had given satisfaction as assessor at the former election, and having received a letter from him, desiring to be continued, I consequently appointed both him and Mr. Serjeant *Runnington*.

Q. From whom did you receive information, that Mr. *Dawes* had given such satisfaction at the other election?

A. I cannot take upon myself to recollect; but I believe his letter to me did express that he had given general satisfaction.

Q. Did you think it necessary, after having retained Serjeant *Runnington*, to have another legal opinion to assist you during the poll?

A. I did so; and it appears by my appointment of another assessor; as I would wish to be as guarded as possible against any objection that might be taken upon any question.

Q. Did you send for Mr. *Dawes* before you had received his letter?

A. I did not.

Q. If you had not received that letter should you have sent for him?

A. I don't know whether I should or not.

Q. Was or was not Mr. *Dawes* employed as assessor in consequence of a wish expressed by Mr. *Thellusson*, or by some of his friends?

A. Now that has brought to my recollection, that an approbation was expressed, either by Mr. *Thellusson* or his friends, with respect to the conduct of Mr. *Dawes* upon the former election.

Q. Had Mr. *Thellusson* or his friends, directly or indirectly, any particular share in paying Mr. *Dawes* as the second assessor?

A. I answered that question before, that the assessors were paid by the candidates (y).

Q. Was

(y) In this the worthy knight was mistaken; at least Mr. *Tierney's* friends never paid any part of the expence of the assessors. They

Q. Was the expence of the two assessors equally de-
frayed by the candidates?

A. I don't know that they have been paid yet.

Q. Has Mr. *Dawes* any demand upon you?

A. None as I know of.

Q. Have you any demand on Mr. *Tierney*?

A. I have no demand on Mr. *Tierney*, but I suppose
the counsel have.

NOTE (D) page 154.

When first the petitioner declared his intentions of di-
viding the question, and taking the opinion of the Com-
mittee upon each point separately, they expressed a doubt
as to the propriety of that mode of proceeding; nor did
they consent to adopt it, although it was not opposed by
Mr. *Thellusson's* counsel, until some cases were quoted,
in which the practice had prevailed. On this subject,
Mr. *Douglas* lays down the following rule: "Though
"the established method seems to be, that the counsel for
"the petitioners begin by opening the whole of their case;
"yet, when it happens to consist of several questions, and
"the determination of one would render the discussion of
"the others unnecessary; as for instance, if the objections
"to a fitting member are, first, that he was not eligible;
"and secondly, that he had not the majority of legal votes;
"the Committee will then, with the consent of the par-
"ties (a), divide the case into the separate questions.
"When the Committee have come to a resolution, upon
"such distinct question, the counsel being called in, it is
"read to them by the chairman. When the determina-

They were the counsel of the returning officer, not of the candidates.
One hundred pounds were paid by Mr. *Tierney's* friends, previous
to the election, to the returning officer, to cover all expences.

(a) I cannot think the consent of parties necessary in this case.
The Committee are to judge what mode of proceeding will best an-
swer the ends of justice, and are bound to act accordingly.

"tion of the first question is sufficient for the decision of
 "the cause, the others are not proceeded upon (b)." "So
 "also in the old Committee of elections," (in whose
 room the select Committees are now substituted) "and
 "at the bar of the House, it was the general practice, when
 "the right of election was in dispute, to separate that
 "question from the rest of the cause, and determine upon
 "it first (c)." The decision of the Committee on the
 first question having avoided the election of Mr. *Thellusson*,
 and seated Mr. *Tierney*, it became unnecessary for him
 to proceed upon the others.

NOTE (E) page 179.

THE following extract from Mr. *Gisborne's* "Enquiry
 "into the Duties of Men" is so apposite, and it so com-
 pletely tallies with these sentiments of the House, deliver-
 ed by the Speaker, that I cannot forbear transcribing it
 in this place. It acquires additional weight from the high
 and respectable character of the author, whether consider-
 ed as a philanthropist or a moral writer.

"There is yet another subject to which I have already
 had occasion briefly to advert; the expensiveness of elec-
 tions, particularly if contested. The evils which flow
 from this source are so many, and so alarming, as to be en-
 titled to more distinct and ample consideration than could
 hitherto have been conveniently afforded to them. They
 may be reduced under two heads; the first comprising
 such as endanger the general happiness, by immediately
 affecting the House of Commons; the second, such as
 undermine it, by their influence on private individuals.

"1. The unbounded profusion which the eagerness of
 competition has introduced, and established custom has

(b) 1. Doug. 63. rule xli.

(c) Ib. 88. Note U. See also the Bristol case, ib. 259.

sanctioned,

functioned, confines within narrow limits the choice of the electors, by deterring or disabling numbers, desirous and fit to represent them, from involving themselves in a ruinous contest. It tends to destroy the balance of the constitution, by virtually transferring the right of election from the People at large, either to combinations of peers, who may find their advantage, especially in the case of County elections, in uniting to crush all opposition to their mandates, by holding out to the independent country gentlemen the prospect of intolerable expence; or to the crown, whose ministers may occasionally be corrupt enough to fight the battles of their dependants, directly or indirectly, out of the public purse; or to the leading political parties of the day, who may bring forward, on the strength of large subscriptions, a number of their adherents, on whose servility they can rely. It tends to fill the House of Commons with representatives of boroughs, little known to their constituents, little connected with them, neither respecting them nor respected by them; and to preclude the advantages which result from the member of parliament feeling himself responsible to those whom he immediately represents. It tends to render the public man little shocked at venality; for it is that perhaps to which he owes the possession of his seat; and little solicitous about his character or his actions, for those are not the recommendations to which he looks for the continuance of it. It tends to support the factions which range themselves on the side of the Court, and those which are arrayed under the banners of Opposition, by increasing the number of needy members; and of needy members, peculiarly indisposed to brook the pressure of contracted circumstances, from having been in possession of affluence previous to their election. Many a victorious candidate, when he enters the House of Commons, stands

— As one escaped from cruel fight,
Sore toil'd, his riven arms to havock hewn,
And cloudy in aspect;

and is strongly tempted to grasp at the forbidden remedy, which promises to allay the smart of his wounds, and restore him to his pristine vigour. By the present expensive system of conducting elections, men who had risen to wealth by the plunder of distant regions, might be enabled to force their way into the British parliament through the barriers erected to secure the constitution; and triumphantly to introduce through the breach a band of disciplined adherents, by whose aid they might elude the accusations, and defeat the claims of justice, and thus encourage the rapacity of future oppressors. The combined operation of these various evils contributes materially to injure the House of Commons in the public esteem; to cast a general imputation on its proceedings; and by detracting from its credit to diminish its power, while, at the same time, it accumulates obstructions to every plan of reform by which they might be restrained.

“ 2. The effects produced on individuals are alike injurious to private happiness, and to the general welfare of the community. The irritation excited by the loss sustained in point of fortune, both by the winning and the losing competitor, sharpens the inveteracy of party; lengthens the shyness and animosities arising from the contest; and aggravates the angry purpose of retaliation and revenge bequeathed from father to son, and destined to embroil subsequent generations. The family, in the meantime, like the wife of Seneca, bears in its faded form and pallid countenance a memento of the blood which it has lost. Every step is feeble, every exertion languid. Domestic comforts are narrowed; and those that remain are embittered by the recollection of such as are no longer attainable. The education of children is conducted on a less ample plan; their destination in the world determined by less liberal views; and their settlement in life formed on a more contracted scale: or the humiliation of retrenchment in outward splendour is shunned by an exorbitant

bitant and therefore short-lived rise of rents; by the premature destruction of timber; by the neglect of the necessary erection or repairs of farm-houses; by imprudent mortgages, and by temporary expedients, often ruinous in the end; by displaying in ostentatious luxury whatever penuriousness can save in necessary expences; and by assigning to gaudy pomp what was formerly devoted to compassion and charity. But the lavish expensiveness of elections, extends its pernicious influence far beyond the leaders of the contending sides. It promotes almost every kind of vice; and supplies without limit the materials for drunkenness to the voters and their families, with all its attendant effects on their morals and habits of life. It is injurious to the peace of society, by familiarizing the lower ranks to scenes of profligacy and riot. It is injurious to commerce, by accustoming the manufacturer to idleness and intemperance, thus rendering him indisposed or unable to work. It is injurious to the national strength, by ruining the health together with the morals of the subject. It is injurious to the constitution, by extinguishing public spirit, and virtuous principles of political conduct in the breast of the people; and by impressing the considerate and the good with such an abhorrence of the numberless mischiefs arising from it, as to deter them from coming forward as candidates, and almost to inspire them with disgust against elections and parliaments. In all these different ways, as well as by its immediate effects on the House of Commons, it preys on the welfare, and endangers the stability of the empire.

“Maladies, which from their nature appear on the point of exhausting and wearing out themselves, may be permitted to take their course: but this malady threatens to increase with the increasing wealth of the state. The extension of trade, foreign and domestic, prepares a continual influx of monied candidates; and the thirst of bribes, rendered insatiable by customary and periodical indulgence, will stimulate the electors more and more.

Fostered thus by natural causes, the growing evil can be checked only by the strong arm of law. And the member of parliament who shall devise, and carry into execution, a plan by which it may be speedily and generally checked, may congratulate himself on having rendered a more essential service to his country, than the general who by his victories should add new provinces to her dominion." *An Enquiry into the Duties of Men*, by Thomas Gisborne, M. A.—V. I. p. 208.—215. 3d edit.

NOTE (F) page 187.

THROUGH the medium of Mr. Serjeant *Runnington*, I have been favoured, by Mr *Ross* of Boswell-court, with a copy of the following case, which was in 1781 laid before the late Mr. *Wallace* and Mr. *Mansfield*, the then attorney and solicitor general, on the subject of Mr. *Gordon's* eligibility for the stewartry of *Kirkcudbright*; with the opinions of those two gentlemen thereupon. Mr. *Ross* was solicitor in the cause.

CASE.

AT the last general election, *Peter Johnston*, Esq; and *John Gordon*, Esq; stood candidates for the stewartry of *Kirkcudbright* in Scotland.

Mr. Johnston was returned; but Mr. Gordon having presented a petition to the House of Commons, complaining of Mr. Johnston's election, the Committee appointed to try the merits of the petition, after sitting several days, came to the following resolutions:

"*Resolved*, That nine of the twelve votes who tendered for the petitioner, and were refused by the præses at the election, be added to the poll.

"*Resolved*, That it is the opinion of this Committee, that John Gordon Esq; was guilty of bribery,

"at

“ at the last election for the stewartry of Kirkcudbright,
“ and was therefore incapable of being elected.”

The Committee determined,

“ That Peter Johnston, Esq; the sitting member,
“ is not duly elected a Commissioner to serve in this
“ present parliament, for the stewartry of Kirkcud-
“ bright; and also,

“ That John Gordon, the petitioner, is not duly
“ elected a Commissioner to serve in this present par-
“ liament, for the said stewartry of Kirkcudbright; and
“ also,

“ That the last election of a Commissioner to serve
“ in this present parliament, for the said stewartry of
“ Kirkcudbright, was a void election.”

The above resolutions appear upon the minutes of the Committee; yet as the Committee did not, for reasons best known to themselves, think proper to report any more than these three determinations, the two resolutions do not appear upon the votes of the House of Commons.

Mr. Gordon and Mr. Johnston have again offered themselves as candidates for the said stewartry; but Mr. Johnston is advised, that, under the true construction of the statute of the seventh of king William the 3d, chapter 4, Mr. Gordon is, by the above resolution, rendered ineligible for the said stewartry, during this present parliament; and that therefore, though he should have the majority of votes at the election, yet, that he is not entitled to the return, but that he Mr. Johnston, being the only other candidate, will be entitled to be returned.

Qu. Your opinion is desired, Whether the resolution of the Committee, as above stated, does disqualify Mr. Gordon from being elected member for the stewartry of Kirkcudbright, upon the present vacancy?

A. I think Mr. Gordon is disqualified from being elected

elected at the ensuing election of a member to supply that vacancy, for which the bribe was given.

JA. WALLACE.

16 March, 1781.

I am of opinion, that the resolution of the Committee does disqualify Mr. Gordon from being elected member for the stewartry of Kirkcudbright, upon the present vacancy.

J. MANSFIELD.

Temple, March 17, 1781.

Although these opinions state in general terms that Mr. Gordon was disqualified, without saying whether the disqualification arose by the common law and usage of parliament, or under the true construction of the statute, or both; yet, it must be recollected, that the case expressly directs their attention to the act of parliament; and they are asked, whether, by the above resolution, Mr. Gordon is not rendered ineligible, under the true construction of the statute of king William.

NOTE (G) page 210.

Underneath are the writ to sheriff for the general election, and the precept which issued to the bailiff of Southwark on Mr. Thellusson's first election being avoided.

The Writ to the Sheriff on the General Election.

GEORGE the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, to the sheriff of the county of Surrey greeting. *Whereas* by the advice and assent of our council, for certain arduous and urgent affairs concern-
ing

ing us, the state, and defence of our kingdom of *Great Britain* and the church, We have ordered a certain parliament to be holden at our city of *Westminster* on the 12th day of *July* next ensuing, and there to treat and have conference with the prelates, great men, and peers of our realm, We command and strictly enjoin you, that (proclamation being made of the day and place aforesaid in your next county court to be holden after the receipt of this our writ) two knights of the most fit and discreet of the said county, girt with swords, and of every city of that county two citizens, and of every borough in the same county two burgesses of the most sufficient and discreet, freely and indifferently by those who at such proclamation shall be present, according to the form of the statutes in that case made and provided, you cause to be elected; and the names of those knights, citizens, and burgesses so to be elected (whether they be present or absent) you cause to be inserted in certain indentures to be thereupon made between you and those who shall be present at such election; and them at the day and place aforesaid you cause to come, in such manner, that the said knights for themselves and the commonalty of the same county, and the said citizens and burgesses for themselves and the commonalty of the said cities and boroughs respectively, may have from them full and sufficient power to do and consent to those things which then and there, by the common council of our said kingdom (by the blessing of God) shall happen to be ordained upon the aforesaid affairs, so that for want of such power, or through an improvident election of the said knights, citizens, or burgesses, the aforesaid affairs may in no wise remain unfinished; willing nevertheless that neither you nor any other sheriff of this our said kingdom, be in any wise elected; and that the election in your full county so made, distinctly and openly under your seal, and the seals of those who shall be present at such election, you do certify

tify to us in our chancery, at the day and place afore said, without delay, remitting to us one part of the afore said indentures annexed to these presents, together with this writ.

Witness, &c.

Precept from the Sheriff of Surrey to the Bailiff of the Borough of Southwark.

SURREY to wit.—*Thomas Sutton*, esquire, sheriff of the said county, to the bailiff of the borough of *Southwark*, in the said county, greeting: Know ye, that I have received a certain writ of our lord the king, to me directed, in the words following; (that is to say)

“ George the Third, by the grace of God, of *Great Britain, France, and Ireland* king, defender of the faith,
 “ &c. to the sheriff of the county of *Surrey*, greeting.
 “ Whereas *George Woodford Thelluffon*, esquire, was lately
 “ chosen one of the burgesses for the borough of *Southwark* in your county, for our present Parliament, summoned to be holden in our city of *Westminster* the
 “ twelfth day of *July* last past, and from thence by our
 “ several writs prorogued to and until the twenty-seventh
 “ day of *September* last past, and there now holden.
 “ And whereas the *Lower House* of our said Parliament
 “ have adjudged the election of the said *George Woodford*
 “ *Thelluffon* to be void, as by letter of our right trusty
 “ and well-beloved councillor *Henry Addington*, speaker
 “ of our said Lower House of Parliament, more fully and
 “ plainly appears; by means whereof our subjects of the
 “ said borough are deprived of one burgess to treat for the
 “ benefit of the same borough in our said Parliament.
 “ Nevertheless we being unwilling that the commonalty of
 “ our kingdom, in our said Parliament assembled to treat
 “ of business concerning us, the state, and defence of our
 “ kingdom and the church, from the afore said cause should
 “ be

“ be diminished or lessened, whereby those affairs may not
 “ have a due end, We command you, that in the place of
 “ the said George Woodford Thellusson, within the borough
 “ aforesaid, one other fit and discreet burghes of the afore-
 “ said borough (proclamation being first made of the
 “ premises, and of the day and place) freely and indif-
 “ ferently by those who shall be present at the procla-
 “ mation, according to the form of the statute in that
 “ case made and provided, you cause to be elected, and the
 “ name of such burghes to be inserted in certain indentures
 “ to be thereupon made between you and them who shall
 “ be present at such election (whether at the said election
 “ he shall be present or absent), and to cause him to come
 “ to the said Parliament, so that the same burghes so to be
 “ chosen may have full power and sufficient authority for
 “ himself and commonalty of the aforesaid borough, to do
 “ and consent to those things which in our Parliament
 “ aforesaid, by the common council of our realm (by the
 “ blessing of God) shall happen to be ordained upon the
 “ aforesaid affairs: willing nevertheless that neither
 “ you, nor any other sheriff of this our kingdom in any
 “ wise be elected; and the election so made distinctly
 “ and openly, under your seal, and the seals of them
 “ who shall be present at such election, certify you to us
 “ in our chancery forthwith, remitting to us one part of
 “ the aforesaid indentures annexed to these presents, to-
 “ gether with this writ. Witness ourself at Westminster,
 “ the twelfth day of November, in the thirty-seventh
 “ year of our reign. YORKE.” And because the exe-
 cution of the said writ belongs to you, Therefore, by
 virtue of the said writ, I require you, that in the place of
 the said George Woodford Thellusson, esquire, within the
 borough aforesaid, one other fit and discreet burghes of the
 said borough (proclamation being first made of the pre-
 mises, and of the day and place) freely and indifferently
 by those who shall be present at the proclamation, ac-
 cording

cording to the form of the statute in that case made and provided, you cause to be elected, and the name of *such burgess* to be inserted in certain indentures to be thereupon made between me and them who shall be present at such election, whether at the said election he shall be present or absent; and to cause him to come to the said Parliament, so that the said burgess so to be chosen may have full power and sufficient authority for himself and the commonalty of the aforesaid borough, to do and consent to those things which in the Parliament of our said Lord the King, by the common council of His Majesty's realm (by the blessing of God) shall happen to be ordained upon the aforesaid affairs; but you are not to elect me or any other sheriff of this kingdom: and the election so made, distinctly and openly, under your seal, and the seals of them who shall be present at such election, you are forthwith to certify to me by sending to me one part of the said indentures, together with this precept, so that I may certify the same into his Majesty's court of chancery forthwith, whereof fail not. Given under the seal of my office the twelfth day of *November*, in the year of our Lord one thousand seven hundred and ninety-six.

By the same Sheriff.

13th *November* 1796. Received this precept from the sheriff of *Surrey*, by the hands of Mr. *George Ware*, at 12 o'clock at noon.

Watkin Lewes.

The execution of this precept appears in the Schedule hereunto annexed.

The answer of *Watkin Lewes*,
high-bailiff of *Southwark*.

NOTE (H) page 221.

The case of *Taylor* and the mayor and aldermen of *Bath*, in 1742, is directly in point with this part of the argument. *Taylor* moved for a mandamus, to be admitted into the office of a common-councilman of the corporation of *Bath*. The defendants returned *non fuit electus*. The plaintiff traversed the return; and the cause being at issue, it appeared in evidence at the trial, that, by the charter, the election of common-councilmen is by the mayor, recorder, aldermen, and common-council, or the major part of them then present; and that the mayor, and twenty-seven, being assembled for this purpose, *Taylor Bigg*, and *Kingston* were proposed as candidates. But *Bigg*, being neither an inhabitant nor freeman, as the charter requires, was objected against, as a disqualified person; notwithstanding which, *Bigg* had fourteen votes, *Taylor* thirteen, and *Kingston* only one. But *Bigg* not being a person qualified, *Lee*, chief justice, before whom this cause was tried, directed the jury, that if they were satisfied that the electors had notice of *Bigg's* want of qualification, they should find for the plaintiff; because *Bigg*, not being qualified, was to be considered as a person not *in esse*, and the voting for him a mere nullity; and that those who did vote for him were to be considered as virtually consenting to the election of *Taylor*. The jury found a verdict for the plaintiff.

A new trial was moved for on the ground of a misdirection to the jury in point of law. It was contended, that the majority having voted for *Bigg*, though not qualified, *Taylor* could not be duly elected, the charter requiring that every person elected must be elected by the majority then present. That *Bigg* being elected *in fact*, his want of qualification could not give a right to *Taylor*, who had not the majority; but made the election void *in toto*. For the election is an entire act, and cannot be void

void as to him who had the majority, and good for him who had not a majority.

But the other three judges of the court of King's Bench agreed with the Lord Chief Justice, that the verdict was right. They held, that as the fourteen electors who voted for *Bigg* had notice that he was not qualified, their votes were thrown away. That when electors vote for a person not qualified, it is the same thing as if they had given no vote at all; in which case it was not disputed, but silence was a constructive consent:—the new trial, therefore, was denied. 3 *Luders*, 324. *extracted from the late Mr. Ford's manuscripts.*

APPENDIX.

THERE is a description of persecuted men dispersed throughout the kingdom, whose votes it is the interest of one or other party to question at almost every contested election. I mean the Catholics. By a series of penal statutes, (the wisdom or policy of which does not affect the present question) statutes, in their practical effect more oppressive and severe, than any of the laws, passed, in France, against the nonjuring priests and emigrés, even during the anarchic reign of the savage and sanguinary tyrant Robespierre (*a*); the whole body of English catholics were, for certain speculative religious tenets, proscribed *en masse*, and debarred, for the space of nearly two centuries, from all the privileges of Englishmen, and from most of the common rights of mankind. Of late years, the severity of these arbitrary laws has been considerably relaxed. By the act of the 18th of the present king, cap. 60. they are permitted to purchase and

(*a*) This is no exaggeration. I shall give a single instance. In France, the ancient worship was prohibited, and the practice of it in public was attended with the severest penalties: but here the tyranny ended. Persons were not compelled to attend the churches of the constitutional priests. In England, it was otherwise: Catholics were not only prohibited the practice of their own religion; they were obliged to submit to the most cruel punishments and deprivations, if they refused to renounce their religious principles, to conform to the established church, to profess to adopt its tenets, or to frequent its places of worship. Search the annals of tyranny from the beginning to the end, and another law cannot be produced at once so flagranty cruel and flagitious. And these laws were in force in this country till the middle of the year 1791. Yet, in 1792, we were the first to cry out against the religious persecutions in France.

inherit lands, and to educate their children. By the 31st of his majesty, c. 32. further rights are restored to them; and, except in a few instances, they are by that act placed on the same footing as the protestant dissenters. By 7. and 8. W. 3. c. 27. §. 19. "No person, who shall refuse to take the oaths of supremacy, shall be admitted to give any vote for the election of any knight of the shire, citizen, burgess, or baron of the cinque ports, to serve in parliament;" which oaths the sheriff or other returning officer is empowered and required to administer, at the request of any one of the candidates (*b*), or of any other person present at such election (*c*). The statute of the 31st of the king, above referred to, makes no alteration in this respect; and therefore, as catholics in general object to take this oath, it becomes a material enquiry, in what manner and by whom it may be legally administered at elections.

This depends on the construction of the 34th of the king, chapter 73, entitled, "An act for directing the appointment of commissioners, to administer certain oaths and declarations, required by law to be taken and made by persons offering to vote at the election of members to serve in parliament." The preamble recites, "that great delays have arisen in the elections of members to serve in parliament, by the time and place in which the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or affirmation of the effect thereof, are usually administered to electors; and in many places it might be rendered impracticable to receive the votes of all persons claiming and having a right to vote, within the time limited by law for the duration of the polls at such elections." To remedy this evil, it is enacted, "That, when a poll shall be demanded at any election of a member or mem-

(*b*) 7 and 8 W. 3. c. 27. §. 19.

(*c*) 6 Ann, c. 23. §. 13.

"bers to serve in parliament, the returning officer or
 "officers at every such election, after such poll shall be
 "demanded, shall, *at the instance and request in writing*
 "*of any of the candidates, under his or their hand or hands,*
 "immediately after such request, and before he or they
 "shall proceed further in taking the poll, retain, nomi-
 "nate, and appoint two or more persons to administer the
 "oaths of allegiance, supremacy, &c. now required by
 "law to be taken by voters at elections of members to
 "serve in parliament; and to certify the names of the
 "respective electors who shall take such oaths, in man-
 "ner therein aftermentioned." And the persons so ap-
 pointed, are authorized and required to administer such
 oaths to every such elector, who shall desire or be required
 to take the same, previous to his voting at such election:
 And they are to be sworn, impartially to administer the
 oaths, and to give a certificate thereof to the person who
 takes them.

By the 2d clause; "Any person or persons claiming to
 "vote at any such election, *may*, at any time before he
 "or they shall give his or their vote or votes at such
 "election, *apply* to any one of the persons so appointed
 "and sworn as aforesaid, to take the said oaths; and the
 "person, to whom such application shall be made, shall
 "accordingly administer the same to such person or per-
 "sons so claiming a right to vote; and shall, immediately
 "upon such oaths being taken, sign and deliver to such
 "person who shall have taken such oaths, a certificate
 "thereof, according to the form prescribed by the act.
 "And every such person, to whom such certificate shall
 "be so given, and having a right to vote at such elec-
 "tion, shall, on producing such certificate to the return-
 "ing officer or officers, or other person or persons law-
 "fully taking the poll at such election, be permitted to
 "poll; and his vote shall be taken and received, in like
 "manner as if the oaths mentioned and expressed in such

"certificate had been administered by the returning officer
"or officers at such election."

By the 3d clause; "When any person or persons,
"offering to vote at any such election, without producing
"such certificate as aforesaid, *shall be lawfully required to*
"take the said oaths; *then, such oaths shall not be admini-*
"*stered* by the returning officer or officers, or other
"person or persons taking the poll, but, the elector or
"electors *so required* to take such oaths, shall immedi-
"ately withdraw, and shall take the said oaths before one
"of the persons appointed and sworn as aforesaid." The
remainder of the act relates to the manner of providing
proper places for the administering these oaths.

So much for the words of the act of parliament: Now
for its construction. At the last *Westminster* election,
no request having been made to the returning officer, in
pursuance of this statute, I opposed the oaths being tender-
ed to an elector, who came to vote for Mr. Fox, and who
objected to take them; but the deputy high bailiff, who
presided, informed me, that the act only applied to cases
where there was a request in writing, under the hand of
the candidate; and that, till such request should be made,
the power of the returning officer was not affected by the
act; and therefore, he was at liberty to administer the
oaths, in the same manner and place as they had been
usually administered before the passing of the act. I be-
lieve he did not attempt to enforce this construction, as
all the catholics who presented themselves were admitted
to poll; and I do not find that the oath of supremacy was
ever tendered to any of them.

The more I reflect upon this subject, the more I am
convinced, that this construction of the deputy high bail-
iff of *Westminster* is erroneous; and that this statute is a
virtual repeal of the 7 and 8 W. 3. c. 27. §. 19. and
of the 6 Ann, c. 23. §. 13. under which the returning
officer derives his authority to administer these oaths.

The statute of the 34th of the king was passed to pre-
vent

vent delays at elections arising from the time and place in which the oaths were usually administered; and which, in populous places, might render it impracticable for all the electors to vote within the time limited by law for the duration of the poll (*d*). Its professed object therefore is, not to benefit the candidate, but to secure to the elector, at all events, the due exercise of his elective franchise. Such being the professed object or subject matter of the act, every part of it must be understood as having a regard thereto (*e*). To have effectually secured this object, it was only necessary to enact, that these oaths should not in future be ever tendered at elections. But, in securing to the elector the free exercise of his franchise, the legislature was careful not to trespass on the right of the candidate. Every candidate has an interest that none shall be allowed to vote, who are not well affected to the constitution of the country, and therefore has a right to insist, that every person who claims to vote, shall take those oaths which the laws deem an unequivocal test of fidelity and submission to the government. But this act vests exclusively in the candidate the power of requiring that they shall be tendered, trusting that no candidate will require it from an improper motive: and, in order effectually to prevent his converting this right into an engine of vexation, it does not allow him to insist upon their being administered to one, without their being also administered to every elector who claims to vote. With this view it is enacted, that the candidate must make a request, in writing under his hand, to the returning officer, who, immediately upon receiving such request, is bound to stop all further proceeding in taking of the poll, till he shall have retained and sworn proper persons, impartially to administer the oaths, and shall have provided for their due administration proper places, to which the electors may have free access without interrupting the

(*d*) See the Preamble.

(*e*) 1 Black. Com. 60.

poll. Is it likely, when the mischief avowedly professed to be remedied by the act, was the injury the electors received, by the delays arising from the time and place in which the oaths were usually administered, that the legislature intended, that the remedy should depend on the caprice and whim of the candidate, and that, whenever he did not choose to insist on the application of the remedy, the mischief should remain in full force, and the administration of the oaths continue as before? That all delays arising from the administering these oaths by the returning officer at the poll, are within the mischief of the statute, cannot be denied; nor that the injury to the elector, by being thereby prevented from voting within the time limited by law, is as great, although the candidate shall not think proper to request, in writing, that the oaths shall be administered. But it is a general principle of law, that a remedial statute "shall be extended by equity" to all cases within the same mischief (*f*); and "the judges are to expound a statute so that a case within the mischief and cause of the act be within the statute by equity, though it be not within the words (*f*)."¹ Here there is no need of resorting to equity: the case is not only within the mischief and cause of the act, but within its words and letter.

I said, that, to prevent vexation, the candidate is not impowered to insist upon the oaths being administered to one, without their being also administered to every elector who claims to vote. The words of the second clause of the statute are, any person claiming to vote "*may*," at any time before he shall give his vote, "*apply*" to any one of the persons so appointed, &c. and upon producing his certificate be permitted to poll. The words, "*may apply*," in this clause, are not merely words of permission, they are compulsory on the voter. Whenever a

(*f*) 4. Com. Dig. 379. Tit. Parliament. (R. 13. 15.) Co. Lit. 24. 6. sub verbo "*equity*."

statute ordains any thing for the benefit of the public, the word "*may*" is imperative, and is to be construed to mean "*shall*." Thus, an indictment lies on the 12 and 13 Chas. 2. c. 12. against church-wardens and overseers, for refusing to make a rate, to reimburse the constables; yet the words of that statute seem only permissive, *viz.* that they shall have power and authority to make a rate for that purpose (g). Surely the regulation of every election in the kingdom is as much for the benefit of the public, as the enabling overseers to make a rate for the reimbursement of constables.

But the third clause is decisive: By that clause it is enacted, "That when any person, offering to vote without producing such certificate, shall be *lawfully required* to take the said oaths, then, *such oaths shall not be administered by the returning officer*, or person taking the poll; but the elector so required to take the said oaths, shall immediately withdraw, and shall take the said oaths before one of the persons appointed and sworn as aforesaid, in manner therein before mentioned." Now, I ask this question: Before a candidate has made such request in writing under his hand to the returning officer, can an elector be *lawfully required* to take these oaths? If he be not *lawfully required*, there is an end of the question, and he must be admitted to poll. If he be *lawfully required*, then by this clause the oaths shall not be administered to him by the returning officer, or person taking the poll, but he shall immediately withdraw, and take them before one of the persons appointed and sworn by virtue of this act. But, the returning officer has no power to appoint or swear such persons, unless at the instance and request in writing of one of the candidates; so that it must eventually depend upon this act of the candidate's, whether an elector can be *lawfully required* to take

(g) Rex v. Barlow. Salk. 609.

these oaths, before he is admitted to poll. This construction is simple, and will best effectuate the object of the statute, the preventing delays occasioned by the ancient manner of administering the oaths at elections. It ought therefore to be favoured: that exposition is always to be favoured, which hinders the statute from being eluded (g).

I have good reason to believe that such was the intention of the legislature. The bill was supported by many who were friendly to the catholics, and who were desirous of obtaining for them, by a side wind, a privilege which they feared parliament would not grant if it were openly demanded. Such conduct in the promoters of the bill was most certainly both praise worthy and amiable; but the subterfuge is beneath the dignity of the legislature of a great nation, and in that point of view cannot meet with too severe reprehension. With this view of relieving the catholics, many of the supporters of the bill endeavoured to throw every obstacle in the way of administering these oaths. They confined to the candidate the right of insisting upon their being administered; rightly judging, that to make the administering them depend upon the candidate, and not to allow them to be tendered without an unequivocal declaration, under his hand, that he desired it, would in practice nearly amount to an abrogation of the oaths. No candidate of liberal sentiment would choose to incur the odium of so illiberal a measure; —I say the odium of so illiberal a measure. Nobody imagines that the catholics at this day object to take the oath of supremacy from any disloyalty to the laws or constitution of the country, or from any disaffection to the person or family of the King. The catholics are not the quarter from which either seditious or traiterous attempts are apprehended. To insist, therefore, when thus circumstanced, on their taking the oath of supremacy,

(g) Com. Dig. Title Parliament. (R. 23.)

can only proceed from the illiberal motive of disfranchising a few persons of delicate and sensible minds, who conscientiously object to this oath, merely because they conceive the wording of it to imply a denial of one of their speculative tenets.

And here it may not be improper to consider the objection of the catholics to the oath of supremacy. They object only to the words "*ecclesiastical or spiritual*," in the following clause. "And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, preeminence, or authority, "*ecclesiastical or spiritual*," within this realm." That their objection is to the wording, and not to the substance of this oath, appears from this. Before administration would countenance the act which passed in their favour in 1791, they required from the catholics a general declaration of their principles, and a formal renunciation of those imputed tenets, their supposed belief in which was the only ground upon which the laws against them were justified, or could be defended. Such a declaration was accordingly signed by their six bishops, by above two hundred of their clergy, and by upwards of twelve hundred laymen: in all, by about one thousand five hundred of the principal catholics. It fell to my lot to go round the kingdom, to procure these signatures; and there were few persons indeed of respectability or property whose names were not obtained to it. That declaration, thus signed, was afterwards, on the 7th of May 1789, presented to Parliament in the form of a petition, and entered in the journals of both Houses (i). The original, with the signatures, has since been deposited in the British Museum. In that declaration is the following passage: "And we do solemnly declare, that no church, nor any prelate, nor any priest, nor any assembly of prelates or priests, nor

(i) 44 Commons Journ. 329.

"any

"any ecclesiastical power whatsoever, hath, have, or
 "ought to have, any jurisdiction or authority whatsoever
 "within this realm, that can, directly or indirectly,
 "affect or interfere with the independence, sovereignty,
 "laws, constitution, or government thereof, or the rights,
 "liberties, persons, or properties of the people of the said
 "realm, or any of them (save only and except by the
 "authority of parliament), and that any such assumption
 "of power would be an usurpation." In the oath, pre-
 scribed by that act to be taken by the catholics, they are
 made to swear in the following words: "And I do de-
 "clare that I do not believe that the pope of Rome, or
 "any other foreign prince, prelate, state, or potentate,
 "hath or ought to have any temporal or civil jurisdiction,
 "power, superiority, or preeminence, directly or indi-
 "rectly, within this realm." A clause, in the same words,
 was inserted in the oath, which they were required to
 take by the act of 1778, above alluded to. But this is
 not all. Another oath had been framed upon, and in
 some measure explanatory of the declaration which they
 had signed. In that oath is the following clause: "And
 "I do protest and declare, and do solemnly swear it to
 "be my most firm and sincere opinion, belief, and per-
 "suasion, that neither the pope, nor any general council,
 "nor any priest, nor any ecclesiastical power whatsoever,
 "can absolve the subjects of this realm, or any of them,
 "from their allegiance to his said Majesty; and that no
 "foreign prince, person, prelate, state, or potentate, hath or
 "ought to have any civil jurisdiction or authority whatso-
 "ever within this realm; or any spiritual authority, power,
 "or jurisdiction whatsoever within this realm, that can, di-
 "rectly or indirectly affect, or interfere, with the indepen-
 "dence, sovereignty, laws, or constitution of this kingdom,
 "or with the civil or ecclesiastical government thereof, as by
 "law established; or with the rights, liberties, persons, or
 "properties of the subjects thereof." This last oath
 was circulated among the catholics, and having received
 a very

a very general approbation, was inserted in the bill ; and had the legislature thought proper to require it, it would have been as generally taken. The bill, with the oath thus worded, passed the House of Commons. In the House of Lords it met with opposition from the bench of bishops ; and, upon the motion of one of these right reverend prelates, the present oath was substituted, it being the same oath as had been taken for some years before by the catholics of Ireland.

Can any thing more clearly demonstrate, that it is not to the substance of the oath of supremacy that the catholics object? There is in fact nothing in that oath which is not contained in the declaration which they have signed, and in the oaths which they have taken. Upon what grounds, then, do the catholics continue to object to the oath of supremacy? It is with sects in religion as with parties in politics. There is an *esprit de corps*, which binds together, and unites all the members in the furtherance of some common principle. The slightest deviation from this common principle, in matters even the most trivial, and otherwise the most indifferent, is always considered as highly dishonourable, and as an indication of a temper disposed to relinquish the whole upon any sufficient inducement. The more a sect or party is persecuted or oppressed, the more strongly this common principle is binding on the body. There is always some limit beyond which it is not allowable to pass. The act of supremacy seems to be that limit with the catholics. It was first required in an age when it was the fashion to run down their principles, and when it was the daily object of the legislature to extirpate their religion, and render its professors odious to the nation. At the same time severe laws were passed, prohibiting its worship, and compelling persons of every description to take oaths and make declarations, formally renouncing some of its leading, if not its most essential doctrines.

The

The oath of supremacy was in the number; and the whole of these oaths and declarations together, were considered, by both catholic and protestant, as the criterion of religious belief, and as the test between the catholic and reformed religion. Till within these few years the catholics were liable to grievous penalties and disabilities for refusing these oaths; and although, since the acts of 1778 and 1791, they can no longer be tendered to them, except in a few instances, and the oath of supremacy alone (*) can now be administered to them when they claim to vote at elections; yet the remembrance of former hardships and of former difficulties remains, and they continue to object to this oath because their ancestors objected to it before them when connected with others, and because they fear lest by taking it they should be supposed to deny their religion. Had this oath not been made a test in the reigns of *Elizabeth* or *William*, and had it never been proposed till the year 1789, when the catholic bill was first in agitation, I am convinced that it would have met with very little objection. It has within these few years been taken at different elections by several catholics, among whom are reckoned persons both of family and fortune. And I have no doubt, but that at the present day, no catholic of liberal sentiment or education would hesitate in taking it, if it would answer any beneficial purpose; and he were sure that it would not be considered as a dishonourable action, or a desertion of his religious principles. I shall not be surprised to see the day when this oath will be generally taken by the catholics. As strong, if not stronger objections, were made to the marriages of catholics by protestant clergymen, or in protestant churches. To be married by a parson, was to admit the powers of the priesthood in protestants; to be married in a protestant church, according

(*) I mean that the oath of supremacy is the only objectionable oath which can be tendered.

to their ceremonies and ritual, was in some measure to adopt the practice, and in that instance to conform to the protestant religion. But the laity soon found, that to persist in this scruple would expose their daughters, and render doubtful the honour and virtue of their wives; at any rate, that it would inevitably bastardize their issue as to every purpose of legal inheritance. The consequences were too dreadful to be submitted to. The laity overcame the scruple, and the priests waved the objection.

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